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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1893.

No. 244.

THE ILLINOIS CENTRAL RAILROAD COMPANY, PLAINTIFF IN ERROR,

vs.

WILLIAM WALKER.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF MISSISSIPPI.

FILED JUNE 26, 1893.

(15,340.)

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1 In the Circuit Court of the United States for the Southern District of Mississippi.

Pleas and proceedings had and done at a regular term of the circuit court of the United States for the southern district of Mississippi, begun and held at Jackson, Mississippi, on the first Monday of May, 1893.

Present and presiding: The Hon. Henry C. Niles, judge of the district court of the United States for the State of Mississippi; present, also, A. M. Lea, district attorney; Fred. W. Collins, marshal, and L. B. Moseley, clerk.

Be it remembered that heretofore, to wit, on the 13th day of February, A. D. 1893, William Walker caused to be filed in the office of the clerk of the said circuit court his declaration against the Illinois Central Railroad Company, numbered 3547 on the docket of said court and in the words and figures following, to wit:

United States Circuit Court, Southern District of Miss.

WILLIAM WALKER
vs.
ILLINOIS CENTRAL RAILROAD COMPANY.

1. The plaintiff, William Walker, who is a resident citizen of the State of Arkansas, in this action brought against the Illinois Central Railroad Company, a corporation, being a citizen of the southern district of Mississippi, operating a railroad, with various places of business in said district, shows unto the court the following facts as constituting a cause of action:

The said defendant is now and has been for a number of years operating a line of railroad through the State of Mississippi.

2 On the — day of ——, 1887, the said defendant owned and was operating said railroad, and plaintiff, who was then a minor about 16 years of age, was in the employ of said company as a common laborer on a ditching train, and it was the duty of the defendant then and there to provide safe and suitable cars, implements and machinery, and tracks and bridges over which its trains were running, which should be reasonably safe and secure, and to provide suitable and competent servants to work with and over said plaintiff in said employment; but in all this the said defendant wholly failed and neglected to perform its duty, and on said — day of ——, 1887, at or near Montgomery station, in the county Lincoln, on the line of said railroad, plaintiff, being then and there on a ditching train, which consisted of an engine and five cars, was injured in a wreck which was caused by the said engine and cars falling through a bridge or trestle, which said trestle was not properly constructed and the foundation of which had been washed out, causing the track to be insecure and danger-

ous, and this by reason of the negligence of said railroad company, the officers of which well knew that said trestle was dangerous and insecure. One George Ard was the boss in charge of said train, and, knowing that said trestle was in a dangerous condition, said George Ard, who had control of said train, with authority to direct and control the engineer and other employees on the same, including plaintiff, caused the said train to be run upon said trestle, when the wreck ensued, in which plaintiff was crushed and greatly damaged. All this was without the fault or negligence of plaintiff, and was wholly due to the negligence of defendant and to the wilful and reckless conduct of said George Ard, who had the right to control and direct plaintiff and who was in charge of said train at the time of said injury, and he was wholly unfit for the position
3 he occupied, as was well known to defendant. When the train fell through said trestle and was thrown from the track plaintiff, without fault or negligence on his part, was thrown into the water and was struck by the timbers of the bridge and the cars and was greatly injured as aforesaid, but by great exertion on his part plaintiff extricated himself from the debris in the wreck and by his own efforts saved his own life and that of the engineer who was in charge of the engine and who had been caught in the wreck. Plaintiff was struck in the back and suffered great pain and injury. He was confined to his bed for a long space of time and was compelled to pay out a large sum of money for medical and surgical attention and for nursing, and his injury was permanent. By reason of such negligence and want of proper care on the part of the defendant and the negligence and wilful conduct of its superior servants as aforesaid plaintiff was then and there *was* injured and damaged to the amount of $10,000, and for this sum, with costs, he brings this suit. Plaintiff is now of full age, having become 21 years old on the 15th day of February, 1891.

2. For further cause of action plaintiff, William Walker, a citizen of the State of Arkansas, in this suit against the I. C. R. R. Company, a corporation and citizen of the southern district of Mississippi, shows unto the court that in the spring of 1890, to wit, on the — day of ——, 1890, the said defendant owned and was operating a line of railroad in said district, and plaintiff, who was then a minor about 19 years of age, was in its employ as a common laborer or section hand, and at Chattawa, in said district, on the line of said railroad, plaintiff was engaged with other laborers in putting down a side track under the supervision and direction of one John Terry, who was in the employ of defendant as the boss or superior
4 officer, having charge of the work, with the authority to direct and control plaintiff and the other laborers. One John J. Conway, who was in the employ of the defendant as roadmaster and who was also a superior officer of plaintiff and of said Terry, was then and there present, unnecessarily and unlawfully hurrying the said Terry, and while plaintiff was then and there engaged, with three other laborers, in carrying a heavy iron rail the said Terry then and there, in the presence of said Conway, wrongfully and unlawfully urged and abused the said laborers and rushed them in

their said work, and thereby caused the other laborers who were engaged with plaintiff in carrying said heavy iron rail to drop the same, which caused plaintiff to fall, and said heavy iron rail fell upon his leg and crushed and injured the same, whereby he suffered great pain and expended large sums of money in endeavoring to be cured, and was made a cripple for life; all of which was due to the wrongful, negligent, and unlawful conduct of the defendant and its superior officers over plaintiff as aforesaid and without any fault or negligence on plaintiff's part and while he was exercising due care. By reason of such injuries plaintiff was then and there damaged in the sum of $10,000, and for said sum, with costs, he brings suit. Plaintiff is now of full age, having become 21 years old on the 15th day of February, 1891.

3. And for further cause of action the plaintiff, William Walker, who is a resident citizen of the State of Arkansas, in this action brought against the Illinois Central Railroad Company, a corporation, being a citizen of the southern district of Mississippi, operating a railroad, with various places of business in said district, shows unto the court the following facts as constituting a cause of action:

The said defendant is now and has been for a number of
5 years operating a line of railroad through the State of Mississippi. On the — day of ——, 1887, the said defendant owned and was operating said railroad, and plaintiff, who was then a minor about 16 years of age, was in the employ of said company as a common laborer on a ditching train, and it was the duty of the defendant then and there to provide suitable and safe cars, implements and machinery, and tracks and bridges over which its trains were running, which should be reasonably safe and secure, and to provide suitable and competent servants to work with and over plaintiff in said employment; but in all this the said defendant wholly failed and neglected to perform its duty, and on said — day of ——, 1887, at or near Montgomery station, in the county of Lincoln, on the line of said railroad, plaintiff, being then and there on a ditching train, which consisted of an engine and five cars, was injured in a wreck which was caused by the said engine and cars falling through a bridge or trestle, which said trestle was not properly constructed and the foundation of which had been washed out, causing the track to be insecure and dangerous, and this by reason of the negligence of said railroad company, the officers of which well knew that said trestle was dangerous and insecure. One George Ard was the boss in charge of said train, and, know- that said trestle was in a dangerous condition, said George Ard, who had control of said train, with authority to direct and control the engineer and other employees on the same, including the plaintiff, caused the said train to be run upon said trestle, when the wreck ensued, in which plaintiff was crushed and greatly damaged. All was without the fault or negligence of plaintiff, and was *without the fault or negligence and was* wholly due to the negligence of defendant and to the wilful and reckless conduct of said George Ard, who had

the right to control and direct plaintiff and who was in charge
6 of said train at the time of said injury, and he was wholly

unfit for the position he occupied, as was well known to defendant. When the train fell through said trestle and was thrown from the track plaintiff, without fault or negligence on his part, was thrown into the water and was struck by the timbers of the bridge and the cars and was greatly injured as aforesaid, but by great exertion on his part plaintiff extricated himself from the debris in the wreck and by his own efforts saved his own life and that of the engineer who was in charge of the engine and who had been caught in the wreck. Plaintiff was struck in the back and suffered great pain and injury. He was confined to his bed for a long space of time and was compelled to pay out a large sum of money for medical and surgical attention and for nursing, and his injury was permanent. By reason of such negligence and want of proper care on the part of the defendant and the negligent and wilful conduct of its superior servants as aforesaid plaintiff was then and there injured and damaged; and in the spring of 1890, to wit, on the — day of ——, 1890, plaintiff, who was then a minor about 19 years of age, was in the employ of the defendant as a common laborer or section hand, and at Chattawa, in said district, on the line of defendant's railroad, plaintiff was engaged with other laborers in putting down a side track under the supervision and direction of one John Terry, who was in the employ of the defendant as the boss or superior officer, having charge of the work, with authority to direct and control plaintiff and the other laborers. One John J. Conway, who was in the employ of defendant as road-master and who was also a superior officer of plaintiff and of the said Terry, was then and there present, unnecessarily and unlawfully hurrying the said Terry, and while plaintiff
7 was then and there engaged, with three other laborers, in carrying a heavy iron rail the said Terry then and there, in the presence of said Conway, wrongfully and unlawfully urged and abused said laborers and rushed them in said work, and thereby caused the other laborers who were engaged with plaintiff in carrying said heavy iron rail to drop the same, which caused plaintiff to fall, and said rail fell upon his leg and crushed and injured the same, whereby he suffered great pain and expended large sums of money endeavoring to be cured, and was made a cripple for life; all of which was due to the wrongful, negligent, and unlawful conduct of the defendant and its superior officers over plaintiff as aforesaid and without any fault or negligence on the part of plaintiff and while he was exercising due care in the ordinary discharge of his duties.

By reason of the above injuries set out the plaintiff was greatly injured and damaged, to wit, in the sum of $10,000, and for said sum, with costs, he brings this suit.

The plaintiff is now of full age, having become 21 years old on the 15th of February, 1891.

BRAME & ALEXANDER,
Attorneys for Plaintiff.

The following endorsements appear on the back:

No. 3547. William Walker *v.* Illinois Central Railroad Co. Declaration. Filed and summons issued Feb'y 13th, 1892. R. H. Winter, clerk.

8 "*Summons.*"

UNITED STATES OF AMERICA,
Southern District of Mississippi.

The President of the United States to the marshall of the southern dist. of Mississippi, Greeting:

We command you that, without delay, you summon The Illinois Central Railroad Company (by John A. Webb, station agent at Jackson, Mississippi), defendant, residing in said district and citizen of the State of Mississippi, that it be and appear at the circuit court of the United States to be held at the court-room thereof, in the city of Jackson, in and for the southern district of Mississippi, on the first Monday of May next, to answer William Walker, who is a citizen of the State of Arkansas, of a plea of damages for personal injuries amounting to ten thousand dollars, and that it do file plea or defense in said court on or before the said meeting thereof or judgment will be given against it by default, and have you then there this writ and how you have executed the same.

Witness the Honorable M. W. Fuller, Chief Justice of the
[SEAL.] Supreme Court of the United States, and the seal of our said court, this 13th day of February, A. D. 1892.

R. H. WINTER, *Clerk.*

The following endorsements appear on the back:

No. 3547. Circuit court of the United States, southern dist. Mississippi, May term, 1892. William Walker *vs.* Illinois Central Railroad Company, defendant, in Hinds county. Brame & Alexander, plaintiff's attorney-.

9 Executed this summons at Jackson, Mississippi, this February 13th, 1892, by handing a true copy thereof to John A. Webb, agent of the Illinois Central Railroad Company, and making known to him the contents of said summons.

Cost, $3.00.

FRED. W. COLLINS, *U. S. M.*,
By L. B. MOSELEY, *D. M.*

The original summons being lost, we agree upon the within as a duplicate of the same, including the marshal's return thereon. We agree that this shall be considered the original summons and return and consent that it may be copied in the transcript of the record on appeal as such.

June 2nd, 1893.

BRAME & ALEXANDER,
Attorneys for Plaintiff.
MAYES & HARRIS,
Attorneys for Defendant.

10 And on the 2nd day of May, 1892, the defendant filed in said cause its plea to the jurisdiction of the court in the words and figures following, to wit:

In the Circuit Court of the United States, Eastern Division of the Southern District of Mississippi, May Term, 1892.

WILLIAM WALKER
vs.
THE ILLINOIS CENTRAL RAILROAD COMPANY. } No. 3547.

And the said defendant, by its attorneys, Messrs. Mayes & Harris, appearing for no other purpose than to make this plea and reserving all manner of exception, comes and says that this court ought not to have or take further cognizance of the action aforesaid, because it says it is not a citizen of the southern district of Mississippi nor of the State of Mississippi; and this the said defendant is ready to verify; wherefore it prays judgment whether this court can or will take further cognizance of the action aforesaid.

MAYES & HARRIS,
Att'ys for Defendant.

UNITED STATES OF AMERICA,
Southern District of Mississippi. }

Personally appeared before me Edward Mayes, attorney of the defendant herein, who, being by me duly sworn, on oath says that the allegations of the above plea are true to the best
11 of his knowledge and belief.

EDWARD MAYES.

Sworn to and subscribed before me this the — day of April, 1892.

—— ——.

And on the 26th day of November, 1892, the plaintiff filed its replication to said plea in the words and figures following, to wit:

WILLIAM WALKER
vs.
THE ILLINOIS CENTRAL RAILROAD COMPANY. } No. 3547.

For replication to the plea of defendant in this cause the plaintiff says that the defendant is and was when this suit was instituted a citizen of the southern district of Mississippi; and of this he puts himself on the country.

BRAME & ALEXANDER,
Att'ys for Plaintiff.

And on the same day an agreement of counsel was filed in these words in said cause:

WILLIAM WALKER
vs.
THE ILLINOIS CENTRAL RAILROAD COMPANY. } No. 3547.

12 It is agreed that at the time suit was instituted the defendant was and now is operating a line of railroad through this district and doing so under and persuant to the written agreement or lease of date 3rd June, 1882, and the rights and powers conferred by it, and the several acts of the legislature of this State of date April 18th, 1873, incorporating the New Orleans, St. Louis and Chicago Railroad Company, and act dated March 11th, 1852, entitled An act: "granting right of way through the State of Mississippi and other privileges to the New Orleans, Jackson and Great Northern Railroad Company, and act of March 10th, 1852, entitled An act "to incorporate the Mississippi Central Railroad Company," and the act of May 13th 1837 entitled An act to incorporate the Hernando Railroad and Banking Company. And the act of February 27th, 1878, entitled An act "ratifying the organization of the Central Mississippi Railroad Company and to consolidate with the New Orleans, Jackson and Great Northern Railroad Company and incorporating the last-named company." And act of March 6th 1880 entitled An act "to authorize the Chicago, St. Louis and New Orleans Railroad Company to consolidate with the Illinois Central Railroad Company;" and it is agreed that the aforesaid act may be read in evidence and that defendant may read in evidence also the charter of the Illinois Central Railroad Company the defendant granted by the State of Illinois, and that copies of these acts of the said charter and the said lease may be prepared and filed with the clerk, and embodied in the bill of exceptions in case of appeal.

It is further agreed that the Illinois Central Railroad Company and the Chicago, St. Louis and New Orleans Railroad Company were never consolidated; unless said lease and facts above stated amount to such; and that the latter company still preserves its distinct organization, but does not operate the railroad. Also
13 that the issue on the plea to the jurisdiction may be tried by the court without a jury.

MAYES & HARRIS,
Attorneys for D'f't.
BRAME & ALEXANDER,
Att'ys for Plaintiff.

And on the 8th day of May, 1893, there was entered in said cause the judgment of the said circuit court on said plea and replication in the words and figures following, to wit:

United States Circuit Court for the Southern District Mississippi.

WILLIAM WALKER
vs.
THE ILLINOIS CENTRAL RAILROAD COMPANY. } No. 3547.

By agreement this cause having been tried before the court without a jury, on the issue raised on the defendant's plea in abatement, the court, after hearing the evidence and agreement, and having by consent taken the cause under advisement for order and judgment, doth find for the plaintiff that said plea in abatement be not sustained. It is therefore considered and ordered that said plea be not sustained.

Ordered, adjudged, & decreed 8th day of May, A. D. 1893.

H. C. NILES, *Judge, &c.*

And on the same day there was entered in said cause the following plea by defendant, with agreement of parties attached:

14 United States Circuit Court, Southern District Mississippi.

WILLIAM WALKER
vs.
THE ILLINOIS CENTRAL RAILROAD COMPANY. } No. 3547.

Issue in short by consent by plea of not guilty.
May 8th, 1893.

MAYES & HARRIS,
Attorneys for Defendant.
BRAME & ALEXANDER,
Attorneys for Plaintiff.

After judgment on defendant's plea to the jurisdiction and before trial on the merits, agreed that above plea was filed by consent and by leave of court; agreed that this may be part of the record.
May 8th, 1893.

MAYES & HARRIS,
Attorneys for Defendant.
BRAME & ALEXANDER,
Attorneys for Plaintiff.

Endorsed.

And on the same day the following verdict and judgment were entered in said cause:

WILLIAM WALKER
vs.
THE ILLINOIS CENTRAL RAILROAD COMPANY. } No. 3547.

15 Came on to be heard this cause after defendant's plea to jurisdiction overruled, and thereupon came the parties; and upon issue joined came a jury of good and lawful men, to

wit, John McGill and eleven others, who, being elected, empaneled, and sworn, after hearing all the evidence, retired under the instructions of the court, and shortly afterwards returned into court the following verdict:

"We, the jury, find for the plaintiff and assess the damages at ($1,200) twelve hundred dollars."

It is therefore considered by the court and so ordered that the plaintiff, William Walker, do have and recover of and from the defendant, The Illinois Central Railroad Company, said sum of twelve hundred dollars ($1,200) and all costs of this suit, to be taxed, for all of which let execution issue.

And on the 10th day of May, 1893, the defendant filed its bill of exceptions in said cause in the words and figures following, to wit:

UNITED STATES OF AMERICA,
Southern District of Mississippi, Eastern Division.

In the Circuit Court of the United States, at May Term, 1893.

WILLIAM WALKER
vs.
THE ILLINOIS CENTRAL R. R. COMPANY. } No. 3547.

Be it remembered that on the 26th day of November, 1892, being a day of the November term, 1892, of this court, came on to be heard the above-entitled cause on the declaration of the plaintiff, the plea of the defendant to the jurisdiction of this court, and the replication thereto, and on the agreement of counsel for the plaintiff and the defendant that the issue bound by said pleadings
16 should be tried by the court on the law and evidence without the intervention of a jury.

Whereupon, the court hearing the same for decision on the law and the truth of said plea, the plaintiff introduced the following evidence:

1. The agreement of counsel herein, filed on the 26th day of November, 1892; which agreement is in the words and figures as follows, to wit:

It is agreed that at the time suit was instituted the defendant was and now is operating a line of railroad through this district and doing so under and pursuant to the written agreement or lease of date 3rd June 1882, and the rights and powers conferred by it, and the several acts of the legislature of this State of date April 18th 1873 incorporating the New Orleans St. Louis and Chicago Railroad Company; and act dated March 11th 1852, entitled An act "granting right of way through the State of Mississippi and other privileges to the New Orleans, Jackson & Great Northern Railroad Company;" and act of March 10th 1852, entitled An act "to incorporate the Mississippi Central Railroad Company;" and the act of May 13th 1837 entitled An act "to incorporate the Hernando Railroad and Banking Company;" and the act of Feb. 27th 1878 entitled An act "ratifying

the organization of the Central Mississippi Railroad Company and to consolidate with the New Orleans, Jackson and Great Northern Railroad Company" and incorporating the last-named company; and act of March 6th 1880 entitled An act "to authorize the Chicago, St. Louis & New Orleans Railroad Company to consolidate with the Illinois Central Railroad Company;" and it is agreed that the aforesaid act may be read in evidence and that defendant may read in evidence also the charter of the Illinois Central Railroad Company, granted by the State of Illinois, the defendant, and that
17 copies of these acts of the said charter and the said lease may be prepared and filed with the clerk and embodied in the bill of exceptions in case of appeal.

It is further agreed that the Illinois Central Railroad Company and the Chicago, St. Louis & New Orleans Railroad Company were never consolidated, unless said lease and facts above stated amount to such; and that the latter company still preserves its distinct organization, but does not operate the railroad. Also that the issue on the plea to the jurisdiction may be tried by the court without a jury.

MAYES & HARRIS,
Attorneys for Defendant.
BRAME & ALEXANDER,
Attorneys for the Plaintiff.

2. The charter of the Illinois Central Railroad Company granted by the State of Illinois February 10th, 1851, which is as follows:

18 SECTION 1. Be it enacted by the people of the State of Illinois, represented in the General Assembly, That Robert Schuyler, George Griswold, Gouverneur Morris, Franklin Haven, David A. Neal, Robert Rantoul, Jr., Jonathan Sturgis, George W. Ludlow, John F. A. Sanford, Henry Grinnell, William H. Aspinwall, Leroy Wiley and Joseph W. Alsop, and all such persons as shall hereafter become stockholders in the company hereby incorporated, shall be a body politic and corporate, by the name and style of the "Illinois Central Railroad Company," and under that name and style shall be capable of suing and being sued, impleading and being impleaded, defending and being defended against, in law and equity, in all courts and places whatsoever, in like manner and as fully as natural persons; may make and use a common seal, and alter or renew the same at pleasure; and by their said corporate name and style, shall be capable in law, of contracting and being contracted with, shall be and are hereby invested with all the powers, privileges, immunities and franchises, and of acquiring, by purchase or otherwise, and of holding and conveying, real and personal estate which may be needful to carry into effect fully the purposes and objects of this act.

SEC. 2. The said corporation is hereby authorized and empowered to survey, locate, construct, complete, alter, maintain and operate a railroad, with one or more tracks, or lines of rails, from the southern terminus of the Illinois and Michigan canal, to a point at the city of Cairo, with a branch of the same to the city of Chicago, on Lake

Michigan; and also a branch via the city of Galena, to a point on the Mississippi river, opposite the town of Dubuque, in the State of Iowa.

SEC. 3. The said corporation shall have right of way upon, and may appropriate to its sole use and control, for the purposes contemplated herein, land, not exceeding two hundred feet in width through its entire length; may enter upon and take possession of and use all and singular any lands, streams and materials of every kind, for the location of depots and stopping stages, for the purpose of constructing bridges, dams, embankments, excavations, station grounds, spoil banks, turnouts, engine-houses, shops and other buildings necessary for the construction, completing, altering maintaining, preserving and complete operation of said road. All such lands, waters, materials and privileges belonging to the State, are hereby granted to said corporation for said purposes; but when owned or belonging to any person, company or corporation, and cannot be obtained by voluntary grant or release, the same may be taken and paid for, if any damages are awarded, in the manner provided in "An act to provide for a general system of railroad incorporations," approved November fifth, one thousand eight hundred and forty-nine; and the final decision or award shall vest in the corporation hereby created all the rights, franchises and immunities in said act contemplated and provided: Provided, that the appeal allowed by the provisions of the aforesaid act, approved the fifth of November, one thousand eight hundred and forty-nine, shall not effect the possession by said company, of the land appraised, and when the appeal is made by other than the company, the same shall not be allowed, except on a stipulation of the party appealing that the said company may enter upon and use the lands described in the petition, for the uses and purposes in said petition set forth, upon said company giving bond and security, to be approved by the clerk of said court, that they will pay all costs and damages that may be awarded against said company, on the hearing of said appeal: Provided, that nothing in this section contained shall be so construed as to authorize the said corporation to interrupt the navigation of said streams.

SEC. 4. The capital stock of said corporation shall be one million of dollars, which may be increased from time to time, to any sum not exceeding the entire amount expended on account of said road, divided into shares of one hundred dollars each, which shall be deemed personal property, and may be issued and transferred in such manner and at such places as may be ordered and provided by the board of directors, who shall have power to require the payment of sums subscribed by stockholders, in such manner and on such terms as they may deem proper; and on refusal or neglect on the part of stockholders, or any of them, to make payment, on the requisition of the board of directors, the shares of such delinquents, may, after thirty days' public notice, be sold at public auction, under such rules as said board of directors may adopt—the surplus money, if any remains, after deducting the payments due, with the interest and the necessary costs of sale, to be paid to such delinquent stock-

holders. The board of directors hereby appointed shall cause books to be opened for subscriptions to said stock, in such manner and at such times and places as they shall direct.

SEC. 5. All the corporate powers of said company shall be
21 vested in and be exercised by a board of directors, and such officers and agents as they shall appoint. The board of directors shall consist of not less than twelve stockholders—three of whom shall be chosen every year by the stockholders—each share having one vote, to be given in person or by proxy—and the governor of the State of Illinois, who shall be a director *ex officio*, perpetually, voting in person or by proxy; each director successively elected to continue in office until his successor is elected and qualified. Vacancies in the board may be filled by a vote of two-thirds of the directors remaining; such appointees to continue in office until the next regular election of directors; but no person shall be so elected who shall not have been openly nominated at a meeting of the directors, at least one week before the time appointed for such election. Other officers, agents and servants, whether members of the board or otherwise, may be appointed, employed, paid and dismissed, under such rules and regulations as the board of directors may, from time to time, adopt.

SEC. 6. The following-named persons shall constitute the first board of directors, to wit: Robert Schuyler, George Griswold, Gouveneur Morris, Franklin Haven, David A. Neal, Robert Rantoul, Jr., Jonathan Sturgism, George W. Ludlow, John F. A. Sanford, Henry Grinnell, Joseph W. Alsop, Leroy Wiley, with the governor of the State of Illinois, for the time being, whose powers shall commence, and be in full force from and after the day this act shall be accepted in the manner herein provided.

SEC. 7. The president, and directors, for the time being, are hereby authorized and empowered, by themselves, their officers or
22 agents, to execute all the powers herein granted, for the purpose of surveying, locating, constructing, completing, altering, maintaining and operating said road and branches, and for the transportation upon the same of persons, goods, wares, and merchandise, with all such powers and authority for the control and management of the affairs of said company, as may be necessary and proper to carry into full and complete effect the meaning and intent of this act.

SEC. 8. The said company shall have power to make, ordain and establish all such by-laws, rules and regulations as may be deemed expedient and necessary to fulfill the purposes and carry into effect the provisions of this act, and for the well ordering, regulating and securing the affairs, business and interests of the company; provided, that the same be not repugnant to the constitution and laws of the United States or of this State, or repugnant to this act. The board of directors shall have power to establish such rates of toll for the conveyance of persons and property upon the same as they shall, from time to time, by their by-laws, direct and determine, and to levy and collect the same for the use of the said company. The transportation of persons and property, the width of track, the

construction of wheels, the form and size of cars, the weight of loads, and all other matters and things respecting the use of said road, and the conveyance of passengers and property, shall be in conformity to such rules and regulations as said board of directors shall from time to time determine. Nothing in this act contained shall authorize said corporation to make a location of their track within any city, without the consent of the common council of said city.

23 SEC. 9. If any person shall carelessly, wilfully, malic-ously, or wantonly delay, hinder or obstruct the passage of any carriage on said road or branches, or shall place, or caused to be placed, any material thereon, or in any way trespass upon, spoil, injure or destroy said road or branches, or any part thereof, or anything belonging or pertaining thereto, or employed or used in connection with its location, survey, construction or management, all persons commit-ing or aiding and abetting in the commission of such trespass or offence shall forfeit and pay to the said company treble such damages as shall be proved before any court of competent jurisdiction; and further, such offenders shall be liable to indictment in the county within whose jurisdiction the offence may be committed, and to pay a fine of not less than thirty nor more than one hundred dollars, to the use of the people of the State of Illinois, or may — imprisioned in the penitentiary for a term not exceeding five years in the discretion of the court before whom the same shall be tried.

SEC. 10. Said corporation may construct their said road and branches over or across any stream of water, water-course, road, highway, railroad or canal, which the route of its course shall intersect, but the corporation shall restore the stream or water-course, road or highway, thus intersected, to its former state, or in a sufficient manner not to have impaired its usefulness. Whenever the track of said railroad shall cross a road or highway, such road or highway may be carried under or over said track, as may be found most expedient; and in case where an embankment or cutting shall make a change in the line of such road or highway desirable, with a view to a more easy ascent or descent, the said company may take such additional lands for the construction of such roads or

24 highway as may be deemed requisite by said corporation, unless the lands so taken shall be purchased, or voluntarily given for the purposes aforesaid. Compensation therefor shall be ascertained in the manner in this act provided, as nearly as may be and duly made by said corporation to the owners and persons interested in such lands. The same when so taken or compensation made to become a part of such intersecting road or highway, in such manner and by such tenure as the adjacent parts of the same highway may be held for highway purposes.

SEC. 11. And when the route of the said road, or either of its branches, as provided in this act, shall intersect, cross, or connect with, or run along or upon the line of any other railroad now constructing, or now in process of construction, by any other company, the company to be formed under this act shall join with such other

company in making all necessary turnouts, sidelings and switches, and other conveniences necessary to further the objects of such connection; and when the route of any other company shall be occupied as aforesaid, just compensation shall be made to such other company for all expenditures made by them in the location of such road; and all railroads so constructed, or now in process of construction, intersected as aforesaid, and connections made with the roads authorized to be built by this act, shall be made, and facilities in the transhipment of freight and passengers, and interchange of cars afforded by each, over the respective roads upon fair and equitable terms, and in case the said companies cannot agree upon the amount of compensation to be made therefor, or the points and manner of such crossings and connections, the transhipment
25 of freight and passengers, and interchange of cars, the same shall be ascertained and determined by three commissioners, one to be chosen by each of said companies, and the two so chosen to choose a third, and in case they cannot agree upon the choice of the third person, he shall be appointed by the judge of the district court of the United States for the district of Illinois; and the decision of the three, when so chosen, shall be final: Provided, that this corporation shall not take and run on the road or line of any such company which is now being constructed without the consent and agreement of the company whose road or line is proposed so to be used.

SEC. 12. Every conductor, baggage master, engineer, brakeman, or other servant of said corporation employed in a passenger train, or at station for passengers, shall wear upon his hat or cap, a badge which shall indicate his office, the initial letters or style of the corporation. No conductor or collector without such badge shall demand or be entitled to receive from any passenger any fare, toll or ticket, or exercise any of the powers of his office, and no other of said officers or servants, without such badge, shall have any authority to meddle or interfere with any passenger his baggage or property. In forming passenger trains, baggage, or freight, or merchandise, or lumber cars shall not be placed in rear of passenger cars; and if they, or any of them, shall be so placed and any accident shall happen, to life or limb, the officer or agent who so directed or knowingly suffered such arrangement, and the conductor or engineer of the train, shall each and all be held guilty of a misdemeanor, and be punished accordingly.

SEC. 13. A bell of at least thirty pounds weight, or a steam whistle, shall be placed on each locomotive engine, and shall
26 be rung or whistled at the distance of at least eighty rods from the place where the said road shall cross any road or street, and be kept whistling or ringing at intervals, until it shall have crossed said road or street, under a penalty of fifty dollars for every neglect, to be paid by said corporation, one-half thereof to go to the informer, and the other half to the State, and to be liable for all damages which shall be sustained by any person by reason of such neglect. Said corporation shall cause boards to be placed, well supported by posts or otherwise, and constantly maintained across

each public road or street where the same is crossed by the railroad, on such elevation as not to obstruct the travel, and to be easily seen by travelers and on each side of said board shall be painted in capital letters of at least the size of nine inches each, the words: "Railroad crossing! Look out for the cars." But this provision shall not apply to streets or cities, or villages, unless the corporation be required to put up such boards by the officers having charge of such streets.

SEC. 14. Said corporation shall, within a reasonable time after said road and branches shall have been located, cause to be made a map and profile thereof, and of the land taken and obtained for the use of such road and branches, and file the same in the office of the secretary of state, and also like maps of the parts thereof located in the different counties through which the same may pass, and cause the same to be recorded in the office for recording deeds in the county in which said parts of said road and branches shall lie.

SEC. 15. For the purpose of securing the construction of
27 said road and branches, the right of way and all the lands which may be selected along the lines of said road and branches within this State, under the grant made by the Government of the United States to the State of Illinois, by virtue of, "An act granting the right of way, and making a grant of land to the States of Illinois, Mississippi and Alabama, in aid of the construction of a railroad from Chicago to Mobile," passed September 20th, eighteen hundred and fifty; and also the right of way which the State of Illinois has heretofore obtained along and on the line of said railroad and branches, as heretof-re located and surveyed, for the uses of the same, as well as the lot of ground obtained by the State within the city of Cairo, for a depot, and all the grading, embankments, excavations, surveys, work, materials, personal property, profiles, plats and papers, constructed, procured, furnished and done by or in behalf of the State of Illinois, for or on account of said road and branches, also the right of way over and through lands owned by the State, are hereby ceded and granted to said corporation, for the only and sole purpose of surveying, locating, constructing, completeing, altering, maintaining and operating said road and branches, as in this act, provided, and in the manner following—that is to say: immediately upon the organization of said company, and the presentation to the governor of the State of Illinois of a certificate, signed by the corporators hereinbefore named, and duly acknowledged, accepting of this act of incorporation, and certifying to the due organization of said corporation—to the subscription to the capital stock thereof by the incorporators hereinbefore named and their associates, of the sum of one million of dollars, and the *bona fide* payment of twenty per cent. thereon
28 to the treasurer of said company, verified by the affidavits of the president and treasurer of said company; (which said certificate shall be filed in the office of the secretary of state), and after three hundred thousand dollars of registered canal bonds or funded internal-improvement bonds of the State of Illinois, or two hundred thousand dollars in specie, or two hundred thousand

dollars of six per cent. United States stock, shall have been by said corporation deposited with the treasurer of the State of Illinois, which shall be safely preserved and kept in the treasury of said State, upon the faith of the same, to be returned to or paid over to the said corporation, upon the full completion and operation of fifty miles of said railroad, by the said corporation, according to the provisions of their said charter, the said governor of the State of Illinois shall, in his official capacity, and in behalf of the State of Illinois, and under the great seal thereof, execute and deliver to the said company a deed in fee-simple, of all said lands granted by the Government of the United States, under the act of Congress aforesaid, said depot lot at Cairo, right of way, grading embankment, excavation, surveys, work, materials, profiles, plats and papers, hereinafter described and set forth, or in any way appertaining to said road and branches: Provided, that said company shall, simultaneously with the execution of said deed by said governor, execute a deed of trust to the persons and for the purposes hereinafter named and expressed: And provided, further, that the deed in fee-simple to be executed by the governor, as aforesaid, shall recite at full length, the act of Congress aforesaid, this act and deed of trust aforesaid. Said deed of trust shall be executed to Morris Ketchum,
29 John Moore and Samuel D. Lockwood, as trustees, and shall include and convey to said trustees and their successors, everything included and conveyed in and by said deed in fee-simple, and in addition thereto the railroad or railroads which may be built upon or along said track or tracks, line or lines, and materials for the construction thereof, with all and singular the buildings, shops, engine-houses, turnouts, stations and real estate, of every nature and description, belonging or to belong to or in anywise appertaining or to appertain to said road and branches, for the uses, trusts and purposes following, that is to say:

First. To secure and guarantee to the State of Illinois, the first and prior lien on everything conveyed by said deed of trust, of every name, character and description, for security as follows: Firstly—The constructing, completing and furnishing said road and branches, in the manner and time and upon conditions in this act provided. Secondly—For the faithful application of all money or property arising from the sale of lands, or obtained upon the faith of the same, as hereafter authorized, to the constructing, completeing, equip-ing and furnishing said road and branches, in accordance with the terms of this act and said act of Congress. Thirdly—The indemnification of the State of Illinois against all and every claim of the United States Government, for proceeds of sale of lands made by said company, under the provisions of this act, in the event said road and branches shall not be completed, as required by the act of Congress referred to. Fourthly—The lien hereby created shall take and have precedence of all demands, incumbrances, mortgages, bonds, judgments and decrees,
30 against said corporation or said property, except so far as the absolute power of selling said lands, or any portion thereof, is herein provided for. Provided, that in case fifty miles

of said road shall not be constructed, according to the provisions of this act, within two years from and after the date of the organization of the company, under the same, the bonds or money herein provided to be deposited with the treasurer of the State of Illinois, shall become forfeited to and become the property of the said State, subject to the disposition of the legislature thereof.

Second. That on its organization said company may enter upon, take and receive possession of the said tracks or lines, for the purpose of surveying, locating, working and constructing said road and branches, with the right of way, land, grading, embankments, excavations, surveys, work, materials, property, profiles, plats and papers aforesaid, to be occupied, used and employed for the purposes contemplated by this act, under whosoever control the same may be.

Third. That said company shall proceed to locate, survey and lay out, construct and complete said road, and branches, through the entire length thereof—the main trunk thereof, or central line, to run from the city of Cairo to the southern termination of the Illinois and Michigan canal, passing not more than five miles from the northeast corner of township twenty-one north, range two east of the third principal meridian, and nowhere departing more than seventeen miles from a straight line between the city of Cairo and said southern termination of said canal, with a branch running from the last-mentioned point, upon the most eligible route, to the city of Galena; thence to a point on the Mississippi river,
31 opposite the city of Dubuque, in the State of Iowa; with a branch also diverging from the main track at a point not north of the parallel of thirty-nine and a half degrees north latitude, and running on the most eligible route into the city of Chicago, on Lake Michigan. That the central road or main track shall be completed with at least one line of rails, or single track with the necessary turnouts, stations, equipments and furnishings, within four years from the date of the execution of said deed of trust, and the branches within six years from the said date, said roads to be made equal, in all respects, to the road leading from Boston to Albany, usually known as the Great Western railway, with such improvements as experience shall have shown to be expedient—the central or main line to be first commenced, and be continued to completion.

Fourth. A portion of said lands so conveyed to said trustees not exceeding one-fourth part thereof in value, to be designated by said company, shall be held by said trustees, free from all incumbrances, for purposes of sale, from time to time, on the requisition of said company, for the purposes of raising funds for the payment of interest on loans, in case of deficiency from other sources, and for such expenditures as the exigencies of the business of the company may require; provided, that no portion of said fourth part of said lands shall be sold until said road and branches shall have been surveyed and located, and the work actually commenced on the main road: Provided, further, that no portion of said lands so held by the said trustees, free from all incumbrance for said purposes, shall be sold

or offered for sale, until the said trustees shall be satisfied
32 that a sum of money has been actually expended upon the construction of a section of at least fifty miles of said road, adjacent to said lands, equal in amount to the sum of money to be raised from the sale of such portion of said lands, or until a section of at least fifty miles of said road, adjacent to said lands, shall have been completed, when the lands on said section will be sold—and so on until the said road and branches shall be completed.

Fifth. For the purpose of raising funds from time to time, for the construction and completion of said road and branches, and the purchase of iron and other materials, to be used thereon, said company may issue its bonds, countersigned by the said trustees, in sums of not less than five hundred nor more than one thousand dollars each, at rates of interest not higher than seven per cent. per annum, payable semi-annually; the principal of said bonds payable in the year one thousand eight hundred and seventy-five, or sooner, at the pleasure of the company, at such place as it shall designate. The payment of said bonds shall be secured by the deed of trust aforesaid, of said lands, roads, and materials as hereinbefore provided; subject, nevertheless, to the prior lien of the State upon said lands, and property hereinbefore provided for; which said prior lien shall be referred to and recited in said bonds, so as to be issued by said company: Provided, that the faith of the State is in nowise pledged for the redemption of said bonds to any extent.

SEC. 16. When the said company shall have completed, and put in running order fifty miles of said road, the said trustees, on the requisition of said company, may proceed to sell the lands
33 lying along and adjacent to such section so completed (and not reserved free from all incumbrances as aforesaid) in such manner as the company may direct. Said lands shall be sold for cash in hand, or the bonds of said company at par. All bonds received on such sales shall be cancelled by said trustees, and delivered to said company. The trustees shall invest all money, received on such sales in the bonds of the company, which shall be, in like manner, cancelled and returned. On cancelling said bonds, and before returning them to the company, said trustees shall make a brief memorandum on each bond, specifying for or on what particular tract or tracts of land the same was received. On making such sales, and receiving the price of such lands in money or bonds as aforesaid, said trustees shall convey such tracts, by an absolute title in fee-simple, to the purchasers; which conveyance shall operate as a release or an acquittance of the particular tract or tracts so sold, from all liability or incumbrance on account of said bonds, so specified in the preceeding section, so as to invest in the purchasers a complete and indefeasible title. Before any sales shall be made of any of said lands, the said trustees shall make a complete record, describing each and every tract of land selected under said act of Congress, a copy of which record shall be filed in the office of the auditor of this State; and as sales of land are made; as provided herein, from time to time, the said trustees shall make and keep a record as aforesaid of every and each tract of land so sold, together

with the name of the person to whom, and the price for which the same was sold. A copy of which record of sales shall be filed in said auditor's office semi-annually.

34 SEC. 17. The trustees shall not, at any time during the construction of said road and branches, sell or dispose of lands to an amount exceeding the sum which shall then have actually been expended upon the said work, but may, at the request of the company, sell as the work progresses, so as to meet expenditures actually made on the sections of road completed, as far as the receipts from said sales may go towards their liquidation. And all lands remaining unsold at the expiration of ten years after the completion of said road and branches, shall be offered at public sale, annually, until the whole is disposed of, and the avails applied to the outstanding bonds of the company as aforesaid; or, if no such bonds be outstanding, said avails shall be paid to said company.

SEC. 18. In consideration of the grants, privileges and franchises herein conferred upon said company for the purposes aforesaid, the said company shall, on the first Mondays of December and June, in each year, pay into the treasury of the State of Illinois five per centum on the gross or total proceeds, receipts, or income derived from said road and branches, for the six months then next preceding. The first payment of such percentage on the main trunk of said road to commence four years from the date of said deed of trust, and on the branches, six years from the date aforesaid, unless said road and branches are sooner completed, then from the date of completion. And for the purpose of ascertaining the proceeds, receipts or income aforesaid, an accurate account shall be kept by said company, a copy whereof shall be furnished to the governor of the State of Illinois; the truth of which account shall be verified by

35 the affidavits of the treasurer and secretary of such company. And for the purpose of verifying and ascertaining the accuracy of such account, full power is hereby vested in the governor of the State of Illinois, or any other person by law, appointed to examine, the book & papers of said corporation & to examine under oath, the officers, agents and employees of said company and other persons. And if any person, so examined by the governor or other authority, shall knowingly and wilfully, swear falsely, or if the officers making such affidavits shall, knowingly and wilfully, swear falsely, every such person shall be subject to the pains and penalties of perjury.

SEC. 19. The selection of lands provided for in the act of Congress making the grant hereinbefore specified, shall be made by said company, or such agents as it may designate, under the appointment of the governor of this State, subject to the approval in said act specified. Said selection, as well as the survey, location, and completion of said road and branches, and the compensation of such trustees, shall be at the cost and charge of said company, without charge of any kind upon the treasury of the State of Illinois. Said road and branches to be free for the use of the United States, and to be employed by the Post Office Department as provided in said act of Congress.

SEC. 20. In case of death, resignation, removal, or inability to act, of either or all of said trustees, the vacancy or vacancies shall be filled by the governor of the State of Illinois and said company, alternately; the governor filling the first vacancy that may occur.

SEC. 21. The corporate authorities of any city or cities on the line of said road or branches, or at either terminus thereof,
36 or any owner or owners of property in any such city, or any association of citizens duly authorized by any such corporation, shall have power to lay down or construct a track or railroad, along any of the streets of any such cities, for the purpose of conveying property to and from said railroad, which may be consigned to any of the warehousemen, in any of said cities, that said track or railroad, (under the direction of said company) may intersect the track of said railroad company at or near the main depot in said cities, respectively; and said company shall, at all times, permit the owners or consignees of property in such cities to take the cars containing the property to them consigned, to their respective warehouses upon said track: Provided, that any car so taken shall be returned without any unnecessary delay. And provided, further, that whenever it shall be neces-ary, for the convenience of the public, or persons receiving or sending property by said railroad, the said company shall permit side tracks to intersect their main road at any depot on or along the line of said road; and that such persons shall be entitled to have any property taken from such side tracks, under the directions and regulations of said company, without unreasonable delay; and for the non-performance by said company of any act of this proviso required to be done, said company shall forfeit and pay to the party aggrieved the sum of fifty dollars, in each case, to be recovered in an action of debt, before any justice of the peace, or any court having jurisdiction thereof.

SEC. 22. The lands selected under said act of Congress, and hereby authorized to be conveyed, shall be exempt from all taxation, under the laws of this State, until sold and conveyed by said corporation or trustees, and the other stock, property and
37 effects of said company shall be in like manner exempt from taxation for the term of six years from the passage of this act. After the expiration of six years, the stock, property and assets belonging to said company shall be listed by the president, secretary, or other officer, with the auditor of the State, and an annual tax for State purposes, shall be assessed by the auditor, upon all the property and assets of every name, kind and description belonging to said corporation. Whenever the taxes levied for State purposes shall exceed three-fourths of one per centum per annum, such excess shall be deducted from the gross proceeds or income herein required to be paid by said corporation to the State, and the said corporation is hereby exempted from all taxation of every kind, except as herein provided for. The revenue arising from said taxation, and the said five per cent. of gross or total proceeds, receipts or income as aforesaid, shall be paid into the State treasury in money, and applied to the payment of interest-paying State indebtedness, until the extinc-

tion thereof: Provided, in case the five per cent. provided to be paid into the State treasury, and the State taxes to be paid by the corporation, do not amount to seven per cent. of the gross or total proceeds, receipts or income, then the said company shall pay into the State treasury the difference, so as to make the whole amount paid equal at least to seven per cent. of the gross receipts of said corporation.

SEC. 23. This act and all grants herein contained, shall cease and be void, unless accepted by said company within sixty days after the passage of this act; and immediately on such acceptance, made in manner above provided, the deed in fee-simple, and the deed of trust aforesaid, shall be made as above provided. All the
38 grants herein contained shall cease and be void unless said road and branches be surveyed and located, and work on the main trunk actually begun, before the first day of January, 1852.

SEC. 24. The State shall have a prior lien upon said road and branches, and all the appurtenances and stock thereof, for all penalties, taxes and dues, which may accrue to the State from said corporation, as herein provided; which lien of the State shall take precedence of all demands judgments or decrees against said corporation.

SEC. 25. That each and every person, who, on the twentieth day of September, one thousand eight hundred and fifty, was the owner of any improvements made previous to that date, on any lot of land conveyed to the said company, and who became such owner with a view to a residence on, or occupation of such lot of land for agricultural purposes, shall have the right to purchase, at not exceeding two dollars and fifty cents per acre, a quantity of the lot so owned, to be bounded by the legal subdivisions, not exceeding one-quarter section, to consist of the quarter quarter, half quarter or quarter section, which will include the improvement aforesaid: Provided, that any person claiming the right to purchase under the provisions of this act, shall, within three months from the date of selecting the lands, file in the clerk's office of the circuit court of the county in which the land claimed is situated a notice to the said trustee and corporation, of his, her or their claims, describing the lands by its numbers, accompanied with an affidavit, stating the date and object of the improvement, the time and manner when and how he, she or they, became the owner thereof, and also the affidavits of at least two residents of the county, proving
39 the facts in relation to such claim: And provided, further, that the right of way upon and across any lot of land sold under the provisions of this section, not exceeding two hundred feet in width, shall be reserved and retained for the passage of the road, as the same may be located and constructed and any person claiming the right to purchase as aforesaid, shall, within twelve months from the date of commencing work on the road within the county in which the land is situated, pay the said trustees or the corporation the consideration money for the land claimed; which payment shall entitle him, her or them, to a deed conveying an estate in fee; but in case of failure to make such payment, the

right to make the purchase shall cease. When two or more persons claim the right to purchase the same lot of land, and file the proof of ownership as herein required, the person proving the first residence by himself, or those under whom he claims the improvement, shall have the right to make the purchase, but no sale or conveyance of any lot of land under the provisions of this section shall effect the rights or equities of parties claiming the same, as between each other.

SEC. 26. In case the persons incorporated by this act shall fail or neglect to accept the provisions of the same, and comply with its conditions within the time and the manner herein prescribed, then the same may be accepted by any other company which shall be approved of by the governor, auditor and treasurer of this State; who, upon complying with the terms and conditions of this act, shall be vested with all the rights, powers and immunities conferred upon the corporators herein named, and shall be subject to all the liabilities in the said act set forth, in as full, ample and complete a manner as if their names were inserted as corporators in this act.

SEC. 27. This act shall be deemed a public act, and shall be favorably construed for all purposes therein expressed, and declared in all courts and places whatsoever, and shall be in force from and after its passage.

Approved Feb. 10, 1851.

3. The sixth, seventh, and eighth sections of an act of the legislature of the State of Mississippi approved May 13th, 1837, entitled "An act to incorporate the Hernando Railroad and Banking Company," which is as follows:

SEC. 6TH. Be it further enacted, That the president and directors, or a majority of them, may appoint all such officers, agents or servants, whatsoever, as may be deemed necessary for the transaction of the business of the company, and may remove any of them at their pleasure. That they or a majority of them shall have power to determine by contract, the compensation of all the engineers, officers, agents or servants in the employ of said company, and to determine by rules the manner of adjusting and settling all accounts against the company, and also the evidence and manner of the transfer of stock of said company.

SEC. 7. Be it further enacted, That the president and directors are by this act invested with full and ample power and all rights are conferred upon them, to construct repair and maintain a railroad from Jefferson, the seat of justice of De Soto county, to Norfolk, or the nearest and best point on the bank of the Mississippi river, within the chartered limits of this State, with as many tracks as the said company may deem necessary, to erect the road not to exceed in width one hundred feet. The said president and directors may cause and direct said road, or any part thereof to be made; and by their agents or themselves complete said road or any part thereof; and by themselves or their agents, or those employed by them, enter upon use and excavate any lands which may be converted to the

use of said road; and erect or cause to be erected all necessary warehouses or other works; may take and use any earth, timber
42 or other materials being in a natural state, which may be needed in the construction, repairing or maintenance of said road; may build bridges, viaducts and lay rails; and construct all works whatsoever which may be necessary for its completion and successful operation; and may extend or cause to be extended, said road, in the direction of and to Tullahoma and Wyatt, whenever it may appear practicable to said company.

SEC. 8TH. Be it further enacted, That the president and directors, or their authorized agents, may contract for any earth, timber gravel or other materials that may be needed to construct repair and maintain said road, or any of its houses or other works. That if the owner or claimant of any land, earth, timber or other materials, wanted or needed for the erection and completion of said road, should be absent or refuse to contract with said company or their agents, it shall be lawful, on application in writing, made to the nearest justice of the peace, for said justice of the peace to issue his warrant, directed to the sheriff or other officer, to summon a jury of twelve freeholders, who, when assembled by said warrant or summons, shall, on oath administered by said sheriff to each of said jury, that they will justly value the damages the owner or owners may or will sustain, by use or occupation of said land or materials, by said company. The jury in determining said damages shall take into consideration the benefit resulting to said owner, and shall make their inquisition in writing, signed by each of the jurors; which shall be returned by the sheriff to the office of the circuit court of the county in which the lands are situate; and shall be confirmed by said circuit court at its next term, if no sufficient cause to the contrary be shown; and when confirmed shall be recorded by the clerk at the expense of the company; and such valuation, when paid or tendered by the company shall vest a complete title in said company and the valuation if not received by the
43 owners when the same is tendered, may be afterwards received by the owner or owners, his, her or their legal representatives. For the services rendered by the sheriff, by this act, he shall receive the sum of three dollars per day, and each juror two dollars per day, to be paid by the company on the certificate of the clerk of said court: Provided, that nothing in said proceeding shall in any way impede said company in the construction, repair and maintenance of said road, or in any warehouse or other works.

4. The act of the legislature of the State of Mississippi approved March 10th, 1852, entitled An act to incorporate the Mississippi Central Railroad Company, which is as follows:

SECTION 1. Be it enacted by the legislature of the State of Mississippi, That Charles G. Shackleford and O. R. Singleton of Madison, Hiram J. Thomas and Samuel L. James of Yazoo, Walker Brook and Morgan L. Fitch of Holmes, C. M. Vaiden and E. G. Whitehead of Carroll, Green Crowder and Thomas Bridges of Yalobusha, A. H. Peques and James Brown of Lafayette, Walter Goodman and

H. W. Walter of Marshall counties, together with those who may hereafter become stockholders in the manner hereinafter provided, their successors and assigns, and the assigns of such assigns be and they are hereby created a body corporate by the name and style of the Mississippi Central Railroad Company; and as such shall have perpetual succession, and by that name and style shall be and are hereby made capable in law to have, purchase receive and enjoy real and personal estate, and to retain to them, their successors and assigns, all such land, tenements and hereditaments as shall
44 be requisite for their accommodation and convenience in the transaction of their business, and as such may in good faith be conveyed to them by way of security or in satisfaction of debts, or by donation or purchase, and the same to sell, grant, rent or *ot*herwise dispose of, to sue and to be sued, to plead and be impleaded, to answer and be answered unto, defend and be defended in any court of law or equity, and to make have and use a common seal, and the same to alter, break or renew at pleasure.

SEC. 2. Be it further enacted, That said corporation shall be and are hereby vested with the rights and authorities to construct a railroad, with double or single track, from the town of Canton, in the county of Madison, or at any such point north of said town as said corporation may elect through such portions of the counties of Madison, Holmes, Carroll, Yalobusha, Lafayette and Marshall to the northern boundary line of this State as said corporation may elect, and also through the county of Yazoo, should said corporation so elect, by such route as after due examination and survey shall be considered most eligible. Such railroad way or privilege to be fifty feet wide on both sides from the centre of the track of the railroad, and to transport, take and carry persons and property of every description whatsoever upon the same, by the power of steam, of animals, or any other mechanical power, or a combination of them, which said company may choose to employ, and the gauge or width of the track of said road shall be five feet.

SEC. 3. Be it further enacted, That the capital stock of said company shall be two millions of dollars, and shall be divided into shares of fifty dollars each, and the shares of the capital stock of said company shall be deemed personal property, transferable by assignment, agreeable to the by-laws of said company.

45 SEC. 4. Be it further enacted, That the above-named persons, or a majority of those who may consent to act as such, shall be commissioners for subscription to the capital stock, who may authorize such persons as they may select to open books of said corporation at such times and places as they may deem expedient. And as soon as the stock shall be subscribed, or $300,000, such one of the persons so acting as commissioner who may be appointed for this purpose shall, by giving at least ten days' notice of the time and place of meeting in at least three of the public newspapers published as near as practicable on the line of said road, for a meeting to elect directors, at the time and place appointed, and nine directors shall be chosen by ballot by said stockholders as shall attend for that purpose, either in person or by proxy; each share of

the capital stock shall entitle the holder to one vote. The persons named in the first section of this act as commissioners, or any three appointed by a majority of such as shall act as commissioners, as hereinbefore provided, shall be inspectors of such election first held, and shall certify under their hands and seals what persons are elected.

A new election of directors shall be held annually, at such time and places as the stockholders at their preceeding meeting shall appoint, but if no election shall be made on the day appointed, such election shall be held at any other time appointed by the by-laws of the corporation, and the directors chosen at any election shall continue in office until their successors are elected and qualified, and as soon after their election as may be convenient they, or a majority of them, shall hold a meeting and elect one of their number president, and if a vacancy shall occur in said board by a death, resignation or otherwise, said vacancy may be filled by the remaining directors or a majority of them. Four or more of said
46 directors, with the president, shall form a board and be competent to transact all business of the corporation, and in the event of the absence of the president from any cause whatever, the directors, if five are present, shall elect one of their number president *pro tempore*.

SEC. 5. Be it further enacted, That upon every subscription for stock there shall be paid at the time of subscribing, to the person or persons authorized by the commissioners, or a majority of those who may act, to open said books, the sum of fifty cents on each share subscribed, and the residue thereof shall be paid in such instalments and at such times as may be required by the president and directors of said company, to the treasurer thereof, provided that not more than five per cent. on the capital stock subscribed shall be paid or called for until in the opinion of the president and directors, or the president and a majority of the directors, a sufficient amount of the capital stock shall be subscribed with that which may be reasonably supposed will be subscribed, with the other resources, means and credits of the company, to construct said road. No payment other than the first shall be demanded until at least thirty days' notice of such demand shall have been given by the president and directors in some newspaper published in the counties of Marshall, Lafayette, Yalobusha, Holmes, Madison and Carroll, or some county adjoining them, and said person or persons appointed by said commissioners as aforesaid to receive such first installment, and who shall receive the same shall forthwith after such election of the president and directors of the company, pay over to said directors or treasurer of said company all moneys received by them, and on failure thereof the president and directors may recover the amount from him or them by motion, on ten days' notice, in the circuit court of the county wherein he
47 or they, or his or their executors or administrators may reside. And the clerk of said court shall endorse on the execution which shall issue on said judgment that no security shall be

taken, and the sheriff or other officer executing said execution shall govern himself accordingly.

SEC. 6. Be it further enacted, That should any stockholder fail or neglect to pay any instalment, or part of said subscription demanded of the aforesaid, for thirty days after the same shall be due and payable, the said president and directors upon giving twenty days' notice thereof, in some newspaper published in any or either of the counties aforesaid, may and they are hereby authorized to sell at public auction, so many shares of such delinquent stockholder or stockholders' stock as shall be necessary to pay such installment and the expense of advertising and sale, and transfer the shares so sold to the purchaser, and the residue of the money arising from such sale, after first paying such installment and expenses, if any, shall be paid to such delinquent stockholder on demand; in the event the proceeds of sale of all the stock held by such delinquent stockholder shall not pay the installment or installments then due, and the expense of said sale, then the president and directors may recover the residue of such unpaid installment or installments, and all costs of such delinquent stockholder, his or her executors or administrators, on ten days' notice, before any justice of the peace, where the amount due does not exceed fifty dollars, or before the circuit court where the amount exceeds fifty dollars, in the county which he, she, or they are inhabitants, and any purchase of stock under such sale shall be subject to the same rules and regulations, as the original subscriber,

SEC. 7. Be it further enacted, That the president and directors of said company shall be and they are hereby vested with all
48 the rights, privileges, and powers requisite and necessary for the constructions, repair, and maintenance of a railroad to be located as aforesaid, with double or single track as a majority of them shall determine, and to make and construct all works whatsoever which may be necessary and expedient in order to the proper completion of said road and its appendages, to erect depots for the accommodation of passengers, storage of property of any description, water stations, machine shops, car-houses and such other buildings as may be thought necessary for the protection and repair of their property, or that which may be entrusted to their care, they shall have power to appoint a treasurer, clerks, engineers, surveyors and such other officers as may appear to them necessary to conduct the business of the company, and require bonds for the faithful performance of their duty.

They shall have power to make contracts with any person or persons in behalf of the company for making and repairing the said railroad or any part thereof, and performing all the work respecting the same which they may deem necessary or proper; to require of the stockholders from time to time installments on their stock until $50.00 a share shall have been paid; to call general meetings of the stockholders, whenever the interest of the stockholder may seem to require it; and to adopt such rules and by-laws for the government of said company as they may think right and proper, not in-

consistent with the laws and constitution of this State or of the United States.

SEC. 8. Be it further enacted, That said corporation be and they are hereby authorized to cause such examinations and surveys to be made on the ground before indicated, as shall be necessary to determine the most eligible route on which to construct said road, and it shall be lawful for said corporation, by its members, officers or agents, to enter upon and take possession of all such lands, timbers, stone, gravel, earth or other materials as may be necessary for the construction and repair of said railroad and the requisite erections, and the president and directors of said company may agree with the owner of said land, timber, earth, gravel, stone or other material, or any article whatever which may be wanted in the construction or repair of said road or any of its works for the purchase or occupation of the same. And in case of disagreement with the owner as to the price of said land required for said road, or any of the materials for the same, or if the owners are under any disability in law to contract, or are out of the county where such lands or materials are, applications may be made to any justice of the peace of such county, who shall thereupon issue his warrant under his hand and seal, to the sheriff of such county, requiring him to summon a jury of twelve disinterested freeholders of the county to appear at or near the land or materials or property to be valued, on a day named in said warrant not less than five nor more than ten days after the issuing the same; and if any one of the persons summoned do not attend, the said sheriff shall immediately summon as many as may be necessary to furnish a panel of twelve jurors, who shall act as a jury of inquest of damages, having an oath or affirmation administered first to each by said sheriff or justice of the peace, justly and impartially to value the damages which the owner or owners will sustain by use or occupation of the land, materials or property required by said company; and the jury in estimating the damages, if for the ground occupied by said road, shall take into the estimate the benefit resulting to such owner or owners by reason of said road passing through or upon said lands, towards the extinguishment of such claim for damages, and the jury shall reduce their inquisition to writing and shall sign and seal the same; and such valuation when paid or tendered to the owner or owners of such property, his, her or their legal representatives if found in the county, or thereafter paid on demand of any person legally authorized to receive the same, shall entitle said company to the land, the estate and interest thus valued as fully as if it had been conveyed by the owner or owners of the same for such term of time as said company shall occupy the same as a railroad; and the inquest of the jury, after payment or tender of the valuation, shall be admitted to record in the office of the probate clerk of the proper county, and be a bar to all action for taking or using such property.

And that said sheriff and jurors be entitled to receive from such company such fees as are allowed for like service: Provided, that either party may within ten days appeal from the decision of said

jury to the circuit court of the proper county in which such lands are situated, and said court shall proceed thereon, as in cases of appeals from the boards of police of this State in relation to county or State roads: Provided further, that said appeal, after the tender, as before provided, of the damages of the jury of inquest, shall in nowise hinder or delay said company from using the land or other property thus valued, nor shall any order be made, nor shall any injunction be granted by any judge or court, to prevent the use thereof or delay said work.

SEC. 9. Be it further enacted, That the eleventh, fifteenth, sixteenth, seventeenth, nineteenth and twenty-fifth sections of an act passed by the legislature of the State of Mississippi in 1848,
51 and approved Feb., 1848, entitled An act to incorporate the Holly Springs Railroad Company, be and the same are hereby declared to be, and are hereby adopted as parts of this act.

52 SEC. 10. Be it further enacted, That the president and directors be and they are hereby authorized to adopt and establish such a tariff of charges for the transportation of persons and property as they may think proper, and the same to alter and change at pleasure.

SEC. 11. Be it further enacted, That the president and directors or any number of stockholders, owning one-half of the whole amount of stock, may call a general meeting of the stockholders by giving at least thirty days' notice thereof in any newspaper published in each of the counties in which said road may be located, specifying the objects of the meeting.

And a majority of the stockholders being represented they may make such order relative to the affairs of the company as they may think proper.

SEC. 12. Be it further enacted, That so soon as a section of twenty miles of said road shall be completed, and as often thereafter as any other section of like length shall be completed, the said president and directors shall transport persons and property of any description that shall be deposited at any of their depots, and which they shall be required to transport to any other depot along the line of said road, as nearly as practicable in the same order of time in which the same was delivered to their care, and may require all their charges for passage, transportation and other services to be paid in advance.

SEC. 13. Be it further enacted, That whenever any railroad company heretofore or hereafter incorporated by this State connecting or crossing said railroad or any branch railroad that may be constructed to connect with said railroad shall require the same, it shall be the duty of the directors of the Mississippi Central railroad to receive on their road the full freighted cars from such
53 other railroad or railroads or branch railroads and transport the same to their destination, and to return the same without changing the loads thereof or charging more therefor than is charged for similar freight on their own road: Provided, that said company shall not be compelled to receive such cars on their road unless they are constructed for the same gauge with their own cars

and are of sufficient strength, of which the engineer on said road shall be the judge, and shall not be required to receive them without receiving payment for at least ten miles of transportation: And provided, that said company shall be entitled in all respects to similar and equal privileges from all such railroads or branch railroads connecting with said railroad as aforesaid, as they are required to perform for such roads under the same conditions and restrictions.

SEC. 14. Be it further enacted, That it shall be lawful for the said president and directors to receive donations, borrow money and secure the payment of the same by a pledge of the property of the company, and make and issue evidences of debt for such loan, and other assurances for the payment thereof: Provided, that no loan be made exceeding one hundred thousand dollars in amount without the consent of a majority of the stockholders present at a general meeting.

SEC. 15. And whereas, it may be thought advisable by the said commissioners, or a majority of them, that books of subscription for capital stock of said company should be opened on different routes in the counties aforesaid, before the location of said railroad.

And whereas, it may be that the subscriber who may have
54 subscribed, for such capital stock may be dissatisfied with the route upon which said road shall be located and may no-desire to remain a stockholder in said company beyond the extent of five per cent. upon the amount of the capital stock by him, her, or them subscribed; he, she or they shall be released from his, her or their subscription beyond said five per cent. on the amount of said capital stock by him, her or them subscribed, therefore, said commissioners who may act or a majority of them, or the president and directors of said company may authorize books of subscription for capital stock to be opened on such different routes, between and along the line indicated by this act, as said commissioners or the president and directors may on one of which routes judge it probable that said road will be located, and after said road shall be located by the president and directors as hereinbefore provided, the person or persons who may have subscribed for capital stock upon the books opened on the route which shall not have been selected for the location of said road, shall be discharged from all liability for the amount of stock by him or her or them subscribed, beyond the five per cent. on the amount of stock by him, her or them subscribed, on giving to the treasurer of said company written notice within thirty days after the location of said railroad by the president and directors of the wish or desire of him, her or them to be discharged from his, her or their subscription for the stock above said five per cent. upon the amount subscribed, and upon payment within thirty days after said location, to the said treasurer, of the sum of five per cent. on the amount by him or them subscribed. But should he, she or they fail to give said notice and pay, or shall have failed to pay said five per cent. as herein required, then he, she or they shall severally be held and bound to pay the whole amount by him, her or them subscribed, in the same manner
55 at the same time that the stockholders of said company shall

be bound to pay their subscription: Provided, that whenever such subscriber for stock shall have given the notice and paid the five per cent. on the amount by him, her or them subscribed, and been discharged from the payment of the stock, beyond five per cent. on the amount subscribed as provided in this act, the treasurer of said company shall issue his certificate to the person or persons so paying the same, specifying the amount by him, her or them paid, which certificate shall be assignable by the endorsement of him, her or them holding the same, and whenever any person shall by the payment of said five per cent. or by holding said certificate by endorsement to him as aforesaid, be the holder of a certificate or certificates to the amount of one or more shares of the capital stock of said company, said treasurer upon the surrender to him of said certificate or certificates by the person or persons holding the same, shall issue to such person or persons a certificate or certificates of stock, which said certificate or certificates shall constitute him, or her, or them, or his, her, or their assigns, stockholders in said company for each certificate of stock thus issued amounting to fifty dollars.

SEC. 16. Be it further enacted, That the commissioners appointed by the first section of this act, or a majority of such of them as may choose to act as such, or the president and directors of said company may adopt such portions of sections 3, 4, 5 and 6 of an act passed by the legislature of the State of Mississippi, in February, 1850, entitled "An act to incorporate the New Orleans and Jackson Railroad Company, and for other purposes," as relates to the subscription for capital stock in said company to be paid in labor, with restrictions and modifications as said commissioners or said
56 president and directors, may deem it proper: Provided, however, that no person be permitted to subscribe for stock payable wholly in labor, but at least twenty-five per cent. of such subscription shall be payable in money as hereinbefore provided.

The board of commissioners at their first meeting adopted sections 3, 4, 5 and 6 of the New Orleans and Jackson railroad charter referred to in the above sections, with great modifications.

The substance of the sections as thus modified and adopted is as follows, viz: Any person at the time of subscribing for stock may designate that an amount of such subscription, not exceeding three-fourths, may be payable in labor.

One per cent. of the whole amount subscribed shall be paid at the time of subscribing. The part of the subscription not payable in labor is subject to the same regulations as any other money subscription, whilst the portion payable in labor is subject to the following regulations, viz: The company may first let its work to the lowest bidder to be performed in the time and manner specified in the letting and should a subscriber for stock bid the same amount with the lowest bid by one not a subscriber the contract shall be assigned to the subscriber.

After such letting is made, should any subscriber for stock payable partly in labor, have failed at such letting to procure a sufficient amount of labor to discharge his labor subscription, the engi-

neer of the company, after taking an oath to act fairly and impartially shall value so much of the labor as shall not have been contracted for at such letting, in such section as he shall think most beneficient to the company, and the subscribers for stock, and shall call upon the subscribers for stock payable in labor, who shall
57 not at such letting have procurred any labor to be performed, or not a sufficient amount to discharge his labor subscription, to perform in a reasonable time (which time the engineer shall designate) a sufficient amount of said labor at such valuation and in the time specified, as shall discharge his labor subscription, and should said stockholder fail to perform such labor after being notified of such assignment to him in the time and at the valuation aforesaid, then the engineer shall value the labor so performed (if any has been performed) and such value shall be credited on the stock of the subscriber to be paid in labor. Should the subscriber for stock payable in labor not have procurred a contract at the letting, or should he fail or refuse to perform that assigned to him by the engineer in the manner aforesaid, then the company shall notify such subscriber at some convenient time at what time and place said labor will be required, and it shall be the duty of the engineer to lay off the work to such subscriber at some point as convenient to the subscriber as practicable; direct in what manner it shall be done and when performed the engineer shall value the same, he first taking an oath that he will lay off the work and assess the value of the labor performed fairly and impartially.

Should the subscriber for stock in labor fail or refuse to perform his labor in one of the modes before specified, such subscriber so in default shall be liable to an action at law for the whole amount subscribed to be paid in labor, and if not paid, an execution shall issue, for the whole amount recovered. The president and directors or a majority of them shall have power to compromise such suit or remit such judgment if they think proper. The president and directors may let out the work on said road to be paid with certificates of the stock of the company, and certificates shall issue to the person
58 or persons performing the same.

SEC. 17. Be it further enacted, That the board of police of the several counties of Madison, Holmes, Carroll, Yalobusha, Lafayette and Marshall, together with such other counties as are adjoining or adjacent to the counties through which said railroad may pass, may for their respective counties subscribe for capital stock in said railroad, not to exceed in amount two hundred thousand dollars for any one county: Provided, however, that an election shall be holden in the county for an on account of which said stock is proposed to be subscribed, by the qualified electors thereof, at the regular precincts of said county, ten days' notice of the time of holding such election and the amount proposed to be subscribed being first given by the board of police; and if at such election a majority of the qualified electors voting shall be in favor of such subscription, then said board shall make such subscription for and in behalf of the county, for the amount specified; but if a majority

of those voting shall be opposed to such subscription the same shall not be made.

SEC. 18. Be it further enacted, That said several boards of police either before or after any election held as provided in the seventeenth section of this act, may direct that whenever any tax shall be collected in their respective counties for the payment of the capital stock so subscribed by the county, which tax the said several boards of police are hereby authorized to assess and collect, from the taxable property or real property of the county, as said board may elect, that the sheriff or tax-collector shall issue to the person paying such tax a certificate specifying the amount of tax so paid, and on account of what railroad the same is paid, which said certificate or certificates shall be transferable by endorsement,
59 and whenever any person either by payment of taxes as aforesaid or by endorsement as aforesaid, shall hold a certificate or certificates in amount equal to one or more shares of the capital stock of said railroad company, he may present the same to the treasurer of said company, who shall thereupon take up the said certificate or certificates, and issue to the holder of them certificates for one or more shares in stock of said company, and such holder of such certificate of stock shall be for such stock substituted to the right of the county as a stockholder to the number of shares named in said certificate.

SEC. 19. Be it further enacted, That said company shall commence the construction of said railroad within two years from the passage of this act, and complete the same in sixteen years; and the capital stock of said railroad shall be exempt from taxation for sixteen years unless said road shall be sooner completed.

Approved March 10th, 1852.

5. The act of the legislature of the State of Mississippi approved March 11th, 1852, entitled An act granting the right of way through the State of Mississippi, and other privileges to the New Orleans, Jackson and Great Northern Railroad Company, which is as follows:

Whereas, the construction of a railroad from the city of New Orleans, running through the State of Mississippi, and by the way of the city of Jackson, to some point on the line of boundary separating the State of Mississippi from the States of Tennessee and Alabama, for the purpose of facilitating intercourse and transportation, is deemed a work of great public importance, and is in strict
60 accordance with the true policy and interest of our State, and should be encouraged by legislative sanction on the part of the State: and whereas, the making of such an improvement is now contemplated by the inhabitants of New Orleans to be styled, "The New Orleans, Jackson and Great Northern Railroad Company," therefore:

SEC. 1. Be it enacted by the legislature of the State of Mississippi, That so soon as the governor of the State shall receive official notice from the president of any company duly organized in the city of New Orleans, and State of Louisiana, and according to the laws of that State, for the purpose as recited in the foregoing preamble, he

shall issue his proclamation within ten days thereafter, declaring said company capable of entering on the territory of this State for the purpose of constructing and extending their works, subject to all the rights, powers, immunities and conditions hereinafter recited.

SEC. 2. Be it further enacted, That the president and directors of the said New Orleans, Jackson and Great Northern Railroad Company, shall be, in all cases where matters of controversy have arisen in this State, capable of suing and being sued here, in like manner as other bodies corporate may sue and be sued within this State, and at any suit, action or proceeding at law, against said company, the process may be served within the proper county, or district, upon any known or appointed agent of said company.

SEC. 3. Be it further enacted, That said company are hereby invested with all rights and powers necessary for the construction, repair and maintenance of said railroad through this State, and may purchase such lands and materials for the same as they may consider necessary; and in case they or their agents cannot agree with any owner or owners of land or other material, upon the terms of purchase, or in case the owner shall be under the age of twenty-one years, or a non-resident of the State, *femme covert*, or *non compos mentis*, said company may proceed to obtain title to said
61 lands and materials in the manner prescribed, and shall be invested with all the powers conferred by sixth, seventh and eighth sections of an act to incorporate the Hernando Railroad Company, approved May 13th, 1837, so far as the same may be applicable to the construction of a railroad through this State from New Orleans to the line of boundary, separating it from the States of Alabama and Tennessee.

SEC. 4. Be it further enacted, That if any person or persons wilfully, by any means whatever, destroy or injure any part of the railroad authorized by this act, or any of its works, carriages or vehicles, or machines, or attempt so to do, such person or persons shall, on conviction thereof, for every such offense forfeit and pay for the use of said company the sum of one hundred dollars, to be sued for before any court of competent jurisdiction; and shall moreover, be liable for all damages occasioned thereby; and may furthermore be proceeded against by indictment, at any time within six months after such offense has been committed, and be punished by fine and imprisonment, or both, at the discretion of the court.

SEC. 5. Be it further enacted, That the capital stock and property of said company, shall be exempt from taxation for the period of fifteen years, and shall never be taxed at a higher rate than the property belonging to other individuals or incorporations within this State; and that said railroad shall be commenced in Louisiana or Mississippi in two years: and if the railroad by this act authorized shall not be completed in all its extent, as contemplated, within this State, so far as to transport freight and passengers within the space of ten years from the passage of this act, and its acceptance by the said company, then this act shall be null and void—other-

wise the rights and privileges it confers shall endure for fifty years.

62 SEC. 6. Be it further enacted, That not less than six citizens of the State of Mississippi, who shall be stockholders of said company, shall be elected as directors of the same, in the manner prescribed for the election of its board of directors and management.

SEC. 7. Be it further enacted, That books of subscription may be opened in this State, and at such places and in such manner as the president and directors may direct; and said subscriptions to the capital stock of said company shall be payable either in money, labor, or materials, according to the terms and conditions stipulated between the subscribers and the president and directors of said company.

SEC. 8. Be it further enacted, That the rates of fare, freight, and transportation shall be uniform, and that said company shall not make any discrimination in favor of any one railroad over another, or their own, in the matter of charges for the conveyance of their cars; provided, that they shall not be compelled to transport any cars on said road not of uniform guage, and the guage of said road shall be five feet.

SEC. 9. Be it further enacted, That in case the said company shall create any loans, or borrow any money on the faith of the same, or on a pledge, mortgage or hypothecation on their works within this State, the same shall have the same force as any pledge, mortgage or hypothecation made within its limits.

SEC. 10. Be it further enacted, That the Jackson and Canton railroad shall be and constitute a part of the line of the New Orleans, Jackson, and Great Northern railroad; provided, the stockholders of the Jackson and Canton Railroad Company shall agree to subscribe their road as stock to said New Orleans, Jackson and

63 Great Northern Railroad Company, and receive shares of stock in said company to the amount of stock subscribed for and paid by them to the said Jackson and Canton Railroad Company, or the said New Orleans, Jackson and Great Northern Railroad Company at the written request of a majority in interest of the stockholders of the Jackson and Canton Railroad Company, or upon the acceptance by the Jackson and Canton Railroad Company of a proposition submitted to them by the New Orleans Jackson and Great Northern Railroad Company shall be authorized and required to purchase the stock, implements and work done on the Jackson and Canton railroad, at a valuation to be agreed upon between said companies: Provided: said valuation shall not subject the stockholders of the Jackson and Canton Railroad Company to any loss on the sum or sums of money they have expended in the construction of said road: Provided, further, that said proposition so submitted by either company, shall be accepted by the other within sixty days after notice in writing of said proposition shall be served on the president of either company: Provided, the Jackson and Canton Railroad Company shall not be compelled to consider any such proposition until the New Orleans, Jackson and Great Northern Railroad Company are prepared to commence said road from

Jackson, north, and will bind their company to complete the said road to Canton in eighteen months after the making of any proposition by the New Orleans Jackson and Great Northern Railroad Company.

SEC. 11. Be it further enacted, That nothing in this act shall be so construed as to prohibit the legislature of this State from chartering other railroad companies with the privilege of forming a junction with the said New Orleans, Jackson and Great Northern Railroad Company.

64 SEC. 12. Be it further enacted, That not more than fifty feet on each side of said road, from the center thereof, shall be allowed said companies: Provided, nothing herein shall be so construed as to prevent the acquisition by said company of such amount of land for depot purposes, not to exceed five acres at any one depot.

SEC. 13. Be it further enacted, That this act take effect and be in force from and after its passage.

Approved March 11th, 1852.

6. The act of the legislature of the State of Mississippi approved April 18th, 1873, entitled An act to authorize the consolidation of the New Orleans, Jackson and Great Northern and the Mississippi Central Railroad Companies, and for other purposes, which is as follows:

Whereas, the New Orleans, Jackson and Great Northern Railroad Company owns a line of railroad from New Orleans La., to Canton, Mississippi, and the line thence northward to Jackson, Tennessee, is owned by the Mississippi Central Railroad Company, but now leased to the Southern Railroad Association, a corporate body existing under the laws of this State, and this line the parties concerned are now rapidly extending to Cairo, Illinois, so that a continuous line of railroad shall be formed from New Orleans to

65 St. Louis, Chicago and all the railroads leading to the Atlantic seaboard and Pacific coast, and looking to this end said parties have already entered into a contract with the Illinois Central Railroad Company; and whereas, it was contemplated when said contract was made, in order fully to secure the advantages of said continuous line of railroad and facilitate the operations thereof, that said New Orleans, Jackson and Great Northern Railroad Company and said Mississippi Central Railroad Company might be consolidated into one corporation whenever the stockholders of those respective companies made determine, and it can lawfully be done. Therefore,

SEC. 1. Be it enacted by the legislature of the State of Mississippi, That the New Orleans, Jackson and Great Northern Railroad Company, and the Mississippi Central Railroad Company, the Southern Railroad Association consenting, be and they are hereby authorized to consolidate themselves into one corporation, in such manner and on such terms and conditions, and under such name, as they may agree upon; and the said corporation when consolidated shall have, possess and exercise all rights, powers, privileges, immunities

and franchises in perpetuity, and be subject to all the duties and obligations not inconsistent with the provisions of this act now conferred and imposed by law upon the said companies or either of them; and said consolidated company shall have power to fix the number of its directors, and the time when they shall be elected; to create any new officers and to fill the same, and pass any by-laws for the government of said company and the management of all its affairs; the capital stock of said consolidated company shall be thirty millions of dollars, and shall be divided into shares of one hundred dollars each, which shall be
66 deemed personal property, transferable by assignment according to the by-laws of the company, and said company may issue bonds and dispose of same in such form and denominations, and bearing such interest as the board of directors may determine upon, to an amount not exceeding the amount of its authorized capital stock; and to secure the payment thereof may mortgage any or all property real, or personal and the franchises and income of said consolidated company; the consolidated company or either of these corporations prior to consolidation, shall have power to take a lease of any railroad, or railroad routes, finished or unfinished, of any company chartered, or to be chartered, which connects mediately or immediately with the line either of the New Orleans, Jackson and Great Northern railroad or the Mississippi Central railroad, and may exercise the franchise of any company now authorized, or which may be hereafter authorized, to make or manage any such roads upon terms to be agreed upon, and in like manner said consolidated company or either of said corporations, shall also have power to lease its own road or roads, and rolling stock, or other property to any other corporation: Provided, that the consolidated company shall be liable to the State for any obligation of either company, also renewal of the bond.

SEC. 2. Be it further enacted, That the time fixed for the completion of the extension of the New Orleans, Jackson and Great Northern railroad from Canton to Kosciusko by an act entitled An act to amend the charter of the New Orleans, Jackson and Great Northern Railroad Company, and to insure the construction and completion of said railroad through the State of Mississippi, approved
67 April 11th, 1871, be and the same is hereby extended from January 1st, 1874, to July 1, 1874, and if by July 1, 1874, said railroads shall be completed and put in running order from Canton to Kosciusko, or if the aforesaid consolidated company, or any other company now incorporated, under and by virtue of any charter or authority granted, or to be granted by the legislature of this State, shall construct and put in running order a railroad from a point on the Mississippi Central railroad, south of West station to the town of Kosciusko, then all the penalties and forfeitures which may have been incurred by said New Orleans, Jackson and Great Northern Railroad Company, for failing to construct a railroad through the State of Mississippi, as provided in its charter and by previous laws of this State, and also any obligation which said company may have executed for the completion of said railroad from

Canton to Kosciusko by or before January 1st, 1874, shall be then and thereby remitted and released, and said company absolved therefrom as fully as if said railroad had been completed and put in running order by the first day of January eighteen hundred and seventy-four, and all the chartered rights, privileges and franchises of said New Orleans, Jackson and Great Northern Railroad Company shall be then and thereby extended, renewed and continued in said company in said perpetuity;

Provided, however, that nothing in this act shall be so construed as to conflict with or in any manner to impair the obligations of the New Orleans, Jackson and Great Northern Railroad Company to extend said railroad to Aberdeen, according to the provisions of said act approved April 11th, 1871, and the provisions of an act amendatory thereof, approved March 18th, 1872.

SEC. 3. Be it further enacted, That the charter of the Mississippi Central railroad, be and the same is hereby so amended that said company is invested with the rights and authority to locate,
68 construct and operate a branch of its road from such points as it may select on its present line, between Canton and West station to Kosciusko, in Attala county, and for these purposes shall have and may exercise and enjoy, all rights, powers privileges and franchises, heretofore granted to and conferred on said company for the location, construction and operation of its original road, and for the purchase or condemnation of lands, material and other property which may be required for the construction and repair of same, and the requisite erections as fully in every respect and to every intent as if the same were here enumerated, or said branch had been specially embraced and provided for in the original charter of said company, and shall have all powers of a like nature, which may be necessary to be exercised in the location, construction and operation of said branch road, or in the acquisition or condemnation of property therefor, and if within thirty days after this act takes effect, the Mississippi Central Railroad Company does not commence the construction of said branch road, it shall be lawful for the New Orleans, Jackson and Great Northern Railroad Company to construct and operate said branch road, with all the rights, powers, privileges and franchises by this act conferred upon said Mississippi Central Railroad Company as fully and to the same extent as if the same were here enumerated, and specially conferred on said New Orleans, Jackson and Great Northern Railroad Company.

SEC. 4. Be it further enacted, That should the cost of constructing the railroad to Kosciusko from the point of departure or of intersection which may be selected under the provisions of this
69 act, be less than would be the cost of completing the railroad from Canton to Kosciusko, as provided by the said act of 11th of April, 1871, hereinbefore recited, excluding the cost of grading already completed, then the sum of two hundred thousand dollars, the value of the stocks transferred to the New Orleans, Jackson and Great Northern railroad, as fixed by the thirteenth section of the said act of the 11th of April, 1871, shall be divided by apportioning the same according to the estimated cost of constructing the lines

before mentioned, and the difference between the same ascertained by such approtionment be applied as a reduction of the amount required to be paid by the several counties or citizens along the line of the railroad, north of Kosciusko, under the ninth section of the act aforesaid, such reduction to be applied by a uniform rate per mile, and the cost of construction shall be ascertained by comparing the actual cost of the line which may be selected under this act, and the estimated cost of finishing the line from Canton to Kosciusko, such estimate to be made by two competent engineers to be selected by the president of said New Orleans, Jackson and Great Northern Railroad Company, with the assent of the governor, said estimate to be made at the expense of said company: Provided, that should the extension of said railroad beyond Kosciusko fail or be prevented by the failure of the counties or citizens to contribute the seven thousand five hundred dollars per mile under the said ninth section of the act of 1871, or from any other cause, then so much of the said sum of two hundred thousand dollars as may be allot-ed to reduce the sum so as to be contributed by the counties or citizens, shall be paid into the State treasury to the credit of the internal-improvement fund, or expended in aid of some railroad in this State
70 connecting with the Mississippi Central railroad, and not yet constructed.

SEC. 5. Be it further enacted, That this act shall take effect and be in force from and after its acceptance by a majority of the stockholders of each of said companies by a vote of said stockholders cast in person or by proxy at any annual or called meeting of each of said companies, and filing with the secretary of state a certificate of such acceptance by each of said companies under its corporate seal, attested by the president, and the renewal of the bond held by the State, said renewed bond to be conditioned upon the faithful carrying out of all the requirements of this act, and to be approved by the governor.

7. The act of the legislature of the State of Mississippi entitled "An act ratifying the organization of the Central Mississippi Railroad Company and its consolidation with the New Orleans, Jackson and Northern Railroad Company into the Chicago, St. Louis and New Orleans Railroad Company and incorporating said last-mentioned company," approved Feb. 27th, 1878, which is as follows:

SEC. 1. Be it enacted by the legislature of the State of Mississippi, That the organization of the purchasers of the Mississippi
71 Central railroad into a corporation in this State under the name of the Central Mississippi Railroad Company, on the 5th day of November, 1877, and the consolidation of said Central Mississippi Railroad Company with the New Orleans, Jackson & Northern Railroad Company into a corporation known as the Chicago, St. Louis & New Orleans Railroad Company, under and in persuance of the articles of consolidation signed by them on the 7th day of November, 1877, be and they are hereby each, severally ratified and confirmed as of their respective dates aforesaid, and the exercise within this State by the Chicago, St. Louis & New Orleans

Railroad Company (the consolidated company aforesaid) of all the franchises, rights, privileges and powers heretofore granted by this State to the Mississippi Central Railroad Company and to the New Orleans, Jackson and Great Northern Railroad Company, and to the New Orleans, St. Louis and Chicago Railroad Company, are hereby ratified and confirmed.

SEC. 2. Be it further enacted, That the Chicago, St. Louis and New Orleans Railroad Company aforesaid, is hereby declared to be a corporation of this State, and as such incorporation is invested with all the rights, privileges, franchises and powers heretofore granted to the Mississippi Central Railroad Company, or to the New Orleans, Jackson and Great Northern Railroad Company, or to the New Orleans, St. Louis and Chicago Railroad Company, in their several acts of incorporation in this State, and acts amendatory thereof.

Provided, That one director shall reside in the State of Mississippi.

72 Provided further, that this act shall be of no force or effect until the debt due the State of Mississippi by the Mississippi Central Railroad Company shall have been adjusted as provided in the act approved February 1st, 1877, entitled "An act to authorize purchasers of railroads under foreclosure of mortgages to organize as incorporated companies."

Provided further, that nothing herein contained shall exempt the Chicago, St. Louis and New Orleans Railroad Company, or its property, from taxation.

SEC. 3. Be it further enacted, That if the Chicago, St. Louis and New Orleans Railroad Company carry out in good faith the agreement to pay the indebtedness due by the Mississippi Central railroad to the State, this act shall continue in force, but if said company shall fail to pay off and discharge said indebtedness within sixty days from the time the several installments fall due, this act shall be null and void.

SEC. 4. Be it further enacted, That this act take effect and be in force from and after its passage.

Approved Feb. 27th, 1878.

8. The act of the legislature of the State of Mississippi approved March 6th, 1880, entitled An act to authorize the Chicago, St. Louis and New Orleans Railroad Company to consolidate with the Illinois Central Railroad Company, which is as follows:

73 SEC. 1. Be it enacted by the legislature of the State of Mississippi, That the Chicago, St. Louis and New Orleans Railroad Company be, and it is hereby, authorized to consolidate with the Illinois Central Railroad Company on such terms and conditions and under such names as the parties to such consolidation may agree to by a vote of two-thirds of the outstanding stock of each of said companies; and that such consolidated company shall have, within this State, all the powers, privileges, rights and franchises which belonged to said Chicago, St. Louis and New Orleans Railroad Company by charter granted by this State, and shall be

subject within this State to all the obligations, duties and responsibilities imposed by said charter.

SEC. 2. Be it further enacted, That every judgment recovered against said consolidated company for injuries to persons or property, shall be superior and prior in lien to any and every mortgage, deed of trust, or other lien executed by said consolidated company, on its property or earnings, and also to the lien of any other judgment against said consolidated company.

SEC. 3. Be it further enacted, That nothing in this act shall be construed to prevent the State from preventing, by legislation, ex-ortion and unjust discrimination in the transportation of freight and passengers.

SEC. 4. Be it further enacted, That this act take effect and be in force from and after its passage.

9. The act of the legislature of the State of Mississippi ap-
74 proved March 1st, 1882, entitled "An act supplemental to an act entitled 'An act ratifying the organization of the Central Mississippi Railroad Company and its consolidation with the N. O., Jackson & Northern R. R. Company into the Chicago, St. Louis and New Orleans Railroad Company and incorporating said last company,' approved Feb. 27th, 1878," which is as follows:

Whereas, the Chicago, St. Louis and New Orleans Railroad Company has, in accordance with the provisions of said last-mentioned act, approved Feb. 27th 1878, adjusted the debt due the State of Mississippi, as provided in the act approved Feb. 1st 1877, and that said company has carried out "in good faith the agreement to pay the indebtedness due by the Mississippi Central railroad to the State," and has already fully paid off and discharged all said indebtedness, therefore,

SEC. 1. Be it enacted by the legislature of the State of Mississippi, That said Chicago, St. Louis and New Orleans Railroad Company is hereby declared to be a corporation of this State, with perpetual succession, and as such is invested with all the rights, powers, privileges liberties and franchises conferred by the act to which this is a supplement, and especially the rights and powers of section ten of an act entitled, "An act to amend the charter of the New Orleans, Jackson and Great Northern Railroad Company, and to insure the construction and completion of said railroad through the State of Mississippi," approved April 11, 1871, and of section ten of an act entitled, "An act to incorporate the Mississippi Central Railroad Company," approved March 10, 1852.

SEC. 2. Be it further enacted, That the Chicago, St. Louis and New Orleans Railroad Company is hereby authorized to consolidate with the Yazoo & Mississippi Valley Railroad Company and
75 with the Canton, Aberdeen & Nashville Railroad Company, or either of them, upon such terms and under such name as they may agree upon; or take a perpetual lease, or for a term of years of either or both of said last-named railroads, and to guarantee the bonds of said last-named companies, or either of them; and the Illinois Central Railroad Company is authorized to guarantee

the bonds of the Yazoo and Mississippi Valley Railroad Company and the bonds of the Canton, Aberdeen and Nashville Railroad Company, and to consolidate with the Chicago, St. Louis and New Orleans Railroad Company and the other two companies herein mentioned, and to lease each of said railroads for a term of years or in perpetuity upon such terms as may be agreed upon.

SEC. 3. Be it further enacted, That the Illinois Central Railroad Company and the Chicago, St. Louis and New Orleans Railroad Company are hereby authorized and empowered to subscribe for stock in the Yazoo and Mississippi Valley Railroad Company, and in the Canton, Aberdeen and Nashville Railroad Company, or either of them.

SEC. 4. Be it further enacted, That nothing in this act contained shall be construed as exempting from taxation the Chicago, St. Louis and New Orleans Railroad Company, or the Illinois Central Railroad Company, or as extending the exemption from taxation as given in the charter of the Yazoo and Mississippi Valley Railroad Company, and of the Canton, Aberdeen and Nashville Railroad Company, to any railroad company with which said companies may be consolidated, and nothing in this act contained shall, in any case of consolidation, be so construed as to apply the maxim rates of freights and fares of the Yazoo and Mississippi Valley, or Canton, Aberdeen and Nashville Railroad Companies' charters to the Illinois Central, or Chicago, St. Louis and New Orleans
76 Railroad Companies, as to railroads already built which said last-named companies or either of them, may own at the time of such consolidation.

SEC. 5. Be it further enacted, That this act take effect and be in force from and after its passage.

10. The lease of the Chicago, St. Louis and New Orleans Railroad Company to the Illinois Central Railroad Company, dated 13th of June, 1882, which is as follows:

This indenture made the thirteenth day of June, one thousand eight hundred and eighty-two, betwee- the Chicago, St. Louis and New Orleans Railroad Company, a corporation created by and organized under the laws of the States of Louisiana, Mississippi, Tennessee, and Kentucky, party of the first part, and the Illinois Central Railroad Company, a corporation created by and organized under the laws of the State of Illinois, party of the second part, witnesseth:

First. That the party of the first part, for and in consideration of the rents, covenants and agreements hereinafter mentioned, reserved and contained on the part and behalf of the party of the second part, its successors and assigns, to be paid kept and performed, has granted, demised and to farm-let, and by these presents does grant, demise & to farm-let unto the said party of the second part, its successors and assigns, all and singular the railroad of the party
77 of the first part, extending from the city of New Orleans, in the State of Louisiana, through the States of Louisiana, Mississippi, Tennessee and Kentucky, to a point on the south bank of

the Ohio river opposite Cairo, in the State of Illinois, and all the branches, spurs laterals and extensions thereof, including the branch known as the Kosciusko branch in the State of Mississippi, and also all the lands, gravel pits, rock quarries, rights of way, depot buildings, and depot grounds, station-houses, and station grounds, water tanks, machine shops, workshops stationary engines, machinery and fixtures, engine-houses, warehouses, offices and all other buildings, structures and improvements of every nature and kind whatsoever, with the appurtenances thereunto belonging, now held or owned, or which may at any time hereafter during the term of this lease be acquired, by the party of the first part, for use in connection with the said railroad and branches, or the business thereof; also all the rolling stock and equipment of said railroad and branches, all locomotive engines and tenders, passenger and freight cars, hand cars, and cars of every other description, furniture, tools, instruments and apparatus, and all other things real or personal, belonging to the party of the first part, and used or intended to be used in operating repairing or maintaining the said railroads and branches, or their appurtenances; also the full right, liberty and privilege of cutting and taking from any of the lands owned by the party of the first part, whatever wood, timber, rock, gravel or other material may be required for any purpose connected with the operation, maintenance, improvement or repair of the said railroad and branches during the term of this lease; and also the exclusive right during the term of this lease, to engage in the business of transporting the mails and passengers and freight on the said
78 railroad and its branches, spurs, laterals and extensions, at such rates and charges for such transportation and other service therewith connected as the said party of the first part may from time to time, establish, to collect and receive for its own use the said rates and charges, and to have, hold, exercise and enjoy all the rights, powers, privileges and franchises which can be lawfully exercised and enjoyed in or about the said railroad and other demised premises, and the management, control and operation of the same, as fully, amply and entirely as the same might or could have been held, exercised or enjoyed by the said party of the first part had this indenture not been made.

To have and to hold the said railroad and branches spurs laterals and extensions, with the appurtenances, and all the real and personal estate, rights, liberties and privileges hereby granted unto the said party of the second part, its successors and assigns, from the first day of July, one thousand eight hundred and eighty-two, for and during the full term of four hundred years thence next ensuing.

Second. That the party of the first part, for the consideration aforesaid, hereby covenants and agrees to and with the party of the second part, that at the beginning of the term hereby granted, on the first day of July, one thousand eight hundred and eighty-two, it will assign, transfer, and deliver to the said party of the second part, for its use all the stores, supplies and materials of every kind,

and all other goods, chattels and effects then in the possession of and belonging to the said party of the first part, not hereinbefore demised, and also all the mortgage bonds of the said party of the first part then remaining in its hands, and held by it subject to sale or other disposition, and also all moneys then on hand, and all notes, bills, accounts, claims, demands, choses in action, and other assets belonging to the said party of the first part, and due to it from any person or persons, or from any corporation or corporations whatsoever.

And the party of the first part hereby constitutes and appoints the said party of the second part its true and lawful attorney in its name, but for the use and benefit of the said party of the second part, to demand, collect, reduce to possession, sue for, recover and receive all and singular the notes bills, accounts, claims, demands, choses in action, and other assets above mentioned, and to make such compromises and agreements, and sign such receipts, acquittances and releases in reference thereto, as the said party of the second part may think fit.

And the party of the first part further covenants and agrees, to and with the party of the second part, that it will, during the continuance of this lease, and of the term hereby granted, maintain its corporate organization and existence by the annual election of directors and officers, and the performance of such other acts as may be required by law for that purpose; and that it will at any time during the said term, when requested by the said part- of the second part, its successors or assigns, exercise every corporate power, and do every corporate act, which the said party of the first part can lawfully exercise or do, to secure to the said party of the second part the full enjoyment of the premises hereby demised, and every part thereof.

Third. That the said party of the second part, for and in consideration of the above-mentioned grants, covenants and agreements, for itself, its successors and assigns, hereby covenants and agrees, to and with the said party of the first part, in manner following—that is to say:

1. That it will, during the continuance of this lease, preserve and maintain the said demised premises in as good condition as the same shall be in at the beginning of the term hereby granted, and keep the said railroad of the party of the first part, and the branches, spurs, laterals and extensions thereof, in efficient operation for the transportation of the mails and of passengers and freight, and that in the conduct and management of the said railroad it will conform in all respects to the charter obligations of the said party of the first part, and to such obligations as are or may be lawfully imposed upon the said party of the first part as a common carrier, and that it will indemnify the said party of the first part and save it harmless from any action or suit by any State, or by any person or corporation, arising out of or founded upon any act or omission of the party of the second part in or about the management or operation of the said railroad and other property hereby demised.

2. And also that the said party of the second part shall and will

pay and discharge all such valid debts and liabilities as shall
81 have been incurred by the party of the first part in the operation of its railroad prior to the first day of July, 1882, and which shall not then have been otherwise provided for, when and as the same shall become due, and payment thereof shall be demanded by the parties entitled thereto, it being understood and expressly provided however that this engagement does not extend or apply to any part of the funded debt of the said party of the first part, or to any indebtedness or liabilities except such as shall have been contracted by the party of the first part according to the usual course of business in the regular and ordinary operation of the said railroad.

3. And also that the said party of the second part shall and will provide for the payment of the following debts or obligations secured by mortgage or deed of trust upon the said premises or on parts of the same, so as effectually to protect the said party of the first part and the premises hereby demised, from any default in the said payments or any of them, to wit:

1st. The principal of the valid mortgage bonds of the New Orleans, Jackson and Great Northern Railroad Company now unpaid and outstanding in the hands of third parties, not exceeding in amount the sum of two million eight hundred and forty-seven thousand dollars ($2,847,000), secured by a mortgage or deed of trust made by said last-named company to one James D. Denegre, and bearing date the twelfth day of June, 1856, together with the interest due and to grow due thereon.

2d. The principal of the valid second-mortgage bonds of the New Orleans, Jackson and Great Northern Railroad Company now unpaid and outstanding in the hands of third parties, not exceeding in amount the sum of one million four hundred and eighty-three thousand dollars ($1,483,000), secured by a mortgage or deed
82 of trust made by said last-named company to one James D. Denegre, and bearing date the first day of October, 1860, together with the interest due and to grow due thereon.

3d. The principal of the valid first-mortgage bonds of the Mississippi Central Railroad Company, now unpaid and outstanding in the hands of third parties, of an uncertain amount, but not exceeding the sum of three hundred and thirty-five thousand five hundred dollars ($335,500), secured by a mortgage or deed of trust made by said last-named company to Charles Butler, Azariah C. Flagg, and Jacob Thompson, and bearing date the first day of November, 1854, together with the interest due and to grow due thereon.

4th. The principal of the valid second-mortgage bonds of the Mississippi Central Railroad Company, now unpaid and outstanding in the hands of third parties, of an uncertain amount, but not exceeding the sum of one million three hundred and nineteen thousand five hundred dollars ($1,319,500), secured by a mortgage or deed of trust made by said last-named company to Jacob S. Rodgers, M. P. Matheson, and William L. Sharkey, and bearing date the first

day of November, 1865, together with the interest due and to grow due thereon.

5th. The principal of the valid first-mortgage bonds of the Chicago, St. Louis and New Orleans Railroad Company, now unpaid and outstanding in the hands of third parties, not exceeding in amount the sum of one million four hundred thousand dollars ($1,400,000), secured by a mortgage or deed of trust made by said last-named company to Adolph Schreiber, James Fentress, and Lewis V. F. Randolph, and bearing date the 8th day of November, 1877, together with the interest due and to grow due thereon.

83 6th. The principal of the valid second-mortgage bonds of the Chicago, St. Louis and New Orleans Railroad Company, now unpaid and outstanding in the hands of third parties, not exceeding in amount the sum of one hundred and eighty thousand dollars ($180,000), secured by a mortgage or trust deed made by said last-named company to William K. Ackerman and Stuyvesant Fish, and bearing date the first day of December, 1877, together with the interest due and to grow due thereon.

Provided, however, and the foregoing covenant is made upon the express condition and agreement (to which the party of the first part hereby assents), that the said party of the second part shall receive in exchange for every one of the thousand-dollar bonds included within the preceding specification, or for any two or more of said bonds, together amounting to one thousand dollars, exclusive of interest, which it shall take up and surrender for cancellation to the said party of the first part, or to the trustee acting under the trust created in and by the mortgage or trust deed made by the said party of the first part to Lewis V. F. Randolph and Lynde A. Catlin, bearing date the fifteenth day of March, 1881, one of the one-thousand-dollar bonds of the said Chicago, St. Louis and New Orleans Railroad Company, secured by the said last-mentioned mortgage, with all the interest coupons attached representing the interest thereafter to accrue on said bond. And if any of the now outstanding bonds referred to in the aforesaid specification shall, by a court of competent jurisdiction, be adjudged invalid, or to be no lien or charge on the property hereby demised, a like amount of the bonds of said

84 party of the first part, to be issued under and secured by the above-mentioned mortgage made by the said party of the first part to Lewis V. F. Randolph and Lynde A. Catlin, shall be delivered to the party of the second part, to be used and applied for the construction, equipment, maintenance and general benefit of the railroad of the party of the first part. And after the satisfaction or extinguishment of all the outstanding bonds referred to in the specification aforesaid, the residue of the bonds, if any, authorized to be issued under the last-mentioned mortgage, not required or used for the specific purposes mentioned in said mortgage, shall be certified and issued by the trustees acting under said mortgage, and be delivered to the said party of the second part, and may be used and employed by the said party of the second part for any of the general purposes specified in the thirteenth clause of the said mortgage; and

Provided further, that nothing herein contained shall be so construed as to prevent the said party of the first part from funding or paying any of the valid bonds included within the aforesaid specification, by the issuance, exchange or sale of bonds secured by said last-mentioned mortgage, agreeably to the provisions in that behalf contained in the said mortgage.

4th. And also, that the said party of the second part shall and will, during the continuance of this lease, punctually pay, or cause to be paid, all taxes and assessments that may be lawfully levied charged or assessed on said demised premises, or any part thereof; and that it will, at all times during the continuance of this lease, provide and keep properly furnished at a convenient point on the line of railroad hereby demised, such office room as the party
85 of the first part may reasonably require for the safe keeping of its books and papers, and for holding such meetings and transacting such business as may be required to keep up and maintain the corporate organization of the party of the first part; and shall and will annually appropriate such sum, not exceding five thousand dollars, as may be required to pay for the services of the trustees acting under the several mortgages or deeds of trust heretofore made by the party of the first part, and for the payment of such officers and agents as may be appointed or employed to preserve the organization of the said party of the first part, and to protect its interests.

5. And also, that the said party of the second part shall and will, during the continuance of this lease, pay as rent for the said demised premises an annual sum equivalent to four per centum on each share of one hundred dollars of the capital stock of the party of the first part, that is to say the sum of four hundred thousand dollars per annum, in equal semi-annual installments, for distribution *pro rata* among the stockholders of the said party of the first part, as dividends on their stock, the first installment of two hundred thousand dollars to be paid on the first day of January, one thousand eight hundred and eighty-three. And it is understood and agreed by the parties hereto, that said semi-annual payments, or any of them, may be made to the party of the first part for distribution by it among its stockholders in proportion to the amount of stock held by them respectively, or, if the said party of the second part shall so elect, to the stockholders of the said party of the first part directly, each to receive his proportional share; but in
86 case any of the said payments shall, be made directly to the said stockholders, evidence of such payments shall be preserved by the said party of the second part, and furnished to the said party of the second part whenever the same may be required.

And also, that the said party of the second part shall and will purchase all now outstanding shares of stock of the party of the first part, which may be offered to it at the office of its treasurer in the city of New York, giving in payment or exchange therefor, the certificates of the said part- of the second part, to be dated on or after July 1st, 1882, of the tenor and effect following, that is to say:

No. —. UNITED STATES OF AMERICA, — shares.
State of Illinois.

Illinois Central Railroad Company Four Per Cent. Leased Line Stock Certificate.

Issue Lim. to $10,000,000; shares, $100.00 each, fully paid.

This certifies that the Illinois Central Railroad Company has received, and holds subject to the conditions named below, — shares of $100 each, fully paid, of the capital stock of the Chicago, St. Louis and New Orleans Railroad Company, and hereby promises to pay to —— —— or assigns, in lawful money of the United States, in the city of New York, four dollars per annum on each of the above-named shares, in equal half-yearly payments of two dollars per share, payable on each first day of January and of July ensuing the date hereof.

The conditions on which the above-named shares are held are as follows:

87 Whereas, the shares referred to above have been transferred to the Illinois Central Railroad Company;

It is hereby stipulated and agreed, that the Illinois Central Railroad Company will continue to hold the said shares of stock, and will not alienate, pledge or part with the same to any other party than the owner of this certificate; and that so long as the above stipulated payments are made by the Illinois Central Railroad Company, it shall enjoy all the rights of a stockholder in said stock.

The holder of this certificate may, upon default in payment of any sum stipulated to be paid as above (said default continuing sixty days), demand from the Illinois Central Railroad Company the above-mentioned number of shares of like stock of the Chicago, St. Louis and New Orleans Railroad Company, and in that case shall have the right, on the surrender of this certificate to an immediate transfer of the said shares, and to a certificate representing the same, to be delivered without delay, unencumbered by the conditions hereof.

This certificate is transferable only at the office of the treasurer of the Illinois Central Railroad Company, in New York, by the registered holder, or a duly authorized attorney, on surrender hereof.

Witness the signatures of the treasurer and secretary.

New York, —— —, 188–.

—— ——, *Secretary.*

—— ——, *Treasurer.*

88 But it is expressly understood and agreed that the privilege hereby given to the stockholders of the said party of the first part of selling or exchanging their stock for the said certificates may be terminated by the said party of the second part at any time after the first day of January, 1883, on giving ninety

days' notice thereof, by publication in one daily newspaper published in the city of New York.

Fourth. That the said party of the second part hereby covenants and agrees to and with the said party of the first part, that until the maturity of the bonds issued or authorized to be issued by the said party of the first part under the mortgage or deed of trust made by it to Lewis V. F. Randolph and Lynde A. Catlin bearing date the 15th day of March, 1881, not exceeding in amount the sum of eighteen million dollars, to wit, until the 15th day of June, 1851, it will provide for the payment of the semi-annual interest which shall become due on the said bonds, and will protect the said party of the first part and the premises hereby demised from any default in the said interest payments or any of them.

Fifth. That the party of the second part, for itself, its successors and assigns, further covenents and agrees to and with the party of the first part, that it will, on the expiration of the term hereby granted, surrender to the party of the first part, its successors or assigns, all and singular the said demised premises, with the appurtenances, in as good plight and condition as the same shall be in when possession thereof shall be delivered to the said party of the second part: Provided, the said party of the first part, its successors or assigns, shall then pay to the party of the second part, its successors or assigns, whatever sums of money may have been advanced by it or them, if any, during the continuance of this lease,
89 for the use, benefit or accommodation of the said party of the first part, at its request, over and above the payments and advances which the said party of the second part is bound to make by the terms of this lease, and which shall then remain unpaid, and it is hereby agreed by the parties hereto that the said party of the second part, its successors and assigns, may retain possession of the said demised premises and appurtenances after the expiration of the term hereby granted, and hold the same and every part thereof as mortgagees in possession, with full power to use and operate the same, until the sums so advanced and still remaining unpaid, with interest thereon at the rate of five per centum per annum, shall have been fully paid and discharged.

Sixth. That a schedule or inventory of all the real and personal property hereby demised, coming into the possession of the party of the second part, pursuant to the terms of this lease, shall be made out as soon as practicable, by the general superintendents of the respective parties hereto, and duplicate copies thereof shall be signed by said general superintendents, one of which copies shall be delivered to the party of the first part and the other to the party of the second part.

Seventh. The party of the first part covenants and agrees to and with the party of the second part, that it, the said party of the second part, on paying the yearly rent herein agreed to be paid and keeping and performing the covenants and agreements herein contained, on its part to be kept and performed, shall, and may, peaceably and quietly have, hold and enjoy the said demised premises, and every part and parcel thereof, with the appurtenances, for and

during the said term of years hereby granted, without any interruption or disturbance from the said party of the first part, its successors or assigns, or any other person or persons lawfully
90 claiming by, from, or under it, or them, or any of them. And further, that the said party of the first part shall and will from time to time, and at all times hereafter, make, execute and deliver all such further assurances as may be reasonably required, for the better and more perfectly assuring and confirming unto the said party of the second part all the estate, rights and privileges hereinbefore granted or intended so to be.

And it is further understood and agreed that the covenants and agreements contained in this indenture shall be binding upon the parties hereto, their successors, legal representatives and assigns.

In witness whereof, the party of the first part and the party of the second part have hereto set their respective corporate seals, and each has caused these presents to be signed by its president, and attested by its secretary, on the day and year first above written.

THE CHICAGO, ST. LOUIS AND NEW ORLEANS RAILROAD COMPANY,
By JAMES C. CLARKE, *President.*
[SEAL.] HOWARD H. HENRY, *Secretary.*
ILLINOIS CENTRAL RAILROAD COMPANY,
By W. K. ACKERMAN, *President.*
[SEAL.] L. A. CATLIN, *Secretary.*

Signed, sealed, and delivered in presence of—

WILLIAM H. CLARKSON.
ED. P. SKENE.

91 STATE OF NEW YORK, }
City and County of New York. }

Be it remembered that on this the nineteenth day of July, in the year one thousand eighteen hundred and eighty-two, before me, William H. Clarkson, a commissioner for the State of Louisiana, resident in said city of New York, duly commissioned and qualified by the executive authority and under the laws of the State of Louisiana to take the acknowledgment and proof of deeds or other conveyances to be used or recorded in said State, and also a commissioner of the State of Mississippi, resident in said city of New York, appointed by the governor of the State of Mississippi and duly qualified under the laws thereof to take the acknowledgment and proof of deeds and other conveyances to be used or recorded in said State; and also a commissioner of the State of Tennessee, resident in said city of New York, appointed by the governor of the State of Tennessee and duly commissioned and qualified under the laws thereof to take the acknowledgment and proof of deeds or other conveyances to be used or recorded in said State of Tennessee; and also a commissioner for the State of Kentucky, resident in said

city of New York, duly commissioned and qualified by the executive authority and under the laws of the State of Kentucky to take the acknowledgment or proof of deeds or other conveyances to be used or recorded in said State, came James C. Clarke, the president of the Chicago, St. Louis and New Orleans Railroad Company, and Howard H. Henry, the secretary of the same company, with each of whom I am personally acquainted and also personally known to me to be the identical persons who signed the foregoing and
92 annexed instrument, and also known to me to be the president and secretary of the said company respectively, the party of the first part in said instrument, who, being by me duly sworn, did depose and say that he, the said James C. Clarke, was the president of said company; that he, the said Howard H. Henry, was the secretary of the same company; that they know the corporate seal of said company; that the seal affixed to the foregoing instrument, purporting to be the corporate seal of said company, is such corporate seal, and that it was affixed thereto by authority of said company, and that they signed their names to said instrument as president and secretary of said company and in behalf thereof by the same authority; and the said James C. Clarke and Howard H. Henry then and there severally acknowledged that they signed, sealed, and delivered the said instrument as their official act and deed respectively as such officers and as the act and deed of the said company for the uses and purposes therein expressed on the day and year herein mentioned.

At the same time and place before me also personally came W. K. Ackerman, the president of the Illinois Central Railroad Company, and L. A. Catlin, the secretary of the same company, with each of whom I am personally acquainted and who are also known to me personally to be the identical persons who signed the foregoing and annexed instrument, and also known to me to be the president and secretary of the said Illinois Central Railroad Company respectively, the party of the second part in the said instrument, who, being by me duly sworn, did depose and say that he the said W. K. Ackerman, was the president of the said Illinois Central Railroad Company; that he, the said L. A. Catlin, was the secretary of the same company; that they knew the corporate seal of the
93 said company; that the seal affixed to the foregoing instrument, purporting to be the corporate seal of the said company, is such corporate seal; that it was affixed thereto by authority of the said company, and that they signed their names to the said instrument as president and secretary of said company respectively and in behalf thereof by the same authority, and the said W. K. Ackerman and L. A. Catlin then and there severally acknowledged that they signed, sealed, and delivered the said instrument as their official act and deed as such officers and as the act and deed of the said Illinois Central Railroad Company for the uses and purposes therein expressed on the day and year herein mentioned.

In witness whereof I have hereunto set my hand and have also hereunto affixed my official seals as commissioner for each of the

States above mentioned, at my office, in the said city of New York, the day and year last above written.

(S'd) WILLIAM H. CLARKSON,
[SEAL.] *Commissioner for the State of Louisiana, in New York.*

(S'd) WILLIAM H. CLARKSON,
[SEAL.] *Commissioner for the State of Kentucky, in New York.*

(S'd) WILLIAM H. CLARKSON,
[SEAL.] *Commissioner for the State of Mississippi, in New York.*

(S'd) WILLIAM H. CLARKSON,
[SEAL.] *Commissioner for the State of Tennessee, in New York.*

94 And this was all of the evidence in the case on this issue; but neither party waived the benefit of any other law or constitutional provision relating to this issue.

And the court, having heard the same and the arguments of counsel, did take said matter under advisement until the next term of said court.

And on this the — day of May, 1893, being a day of the May term, 1893, of said court, the court, having fully considered the same, doth consider that said plea is not true, and rendered and entered the following judgment:

United States Circuit Court for the Southern District — Mississippi.

WILLIAM WALKER
vs.
THE ILLINOIS CENTRAL RAILROAD COMPANY. } No. 3547.

By agreement, this cause having been tried before the court without a jury on the issue raised on the defendant's plea in abatement, the court, after hearing the evidence and argument and having by consent taken the cause under advisement for order and judgment, doth find for the plaintiff that said plea in abatement be not sustained. It is therefore considered and ordered that said plea be not sustained.

Ordered, adjudged, & decreed this 8th day of May, A. D. 1893.

H. C. NILES, *Judge, &c.*

95 To which decision and judgment of the court the said defendant then and there excepted and tendered this its bill of exceptions, which is hereby signed, sealed, and made a part of the record in said cause.

Witness my seal and signature this the 9th day of May, 1893.

H. C. NILES, *Judge.* [SEAL.]

And on the 16th day of May, 1893, the following agreement as to costs was filed in said cause:

WILLIAM WALKER
vs.
ILLINOIS CENTRAL RAILROAD COMPANY. } No. 3547.

If it shall be held that the plaintiff is entitled to recover in this case, then no point is to be made by defendant as to its being taxed with all the costs, and this agreement is to be taken in lieu of a certificate or order of the judge allowing plaintiff full costs.

MAYES & HARRIS,
Attorneys for the Defendant.
BRAME & ALEXANDER,
Attorneys for the Plaintiff.

May 16th, 1893.

Endorsed.

And on the 16th day of May, 1893, the defendant presented in open court its petition for writ of error in said cause, which, with the endorsements thereon, is in the words and figures following:

To the Honorable Henry C. Niles, judge of the district court of the United States in and for the southern district of Mississippi:

The undersigned, the Illinois Central Railroad Company, feels itself aggrieved by a judgment rendered at the May term,
96 1893, of the circuit court of the United States in and for the State and district aforesaid and eastern division thereof in a certain cause wherein one William Walker was plaintiff and the said Illinois Central Railroad Company was defendant, and tenders herewith its assignment of errors therein.

Wherefore it prays that a writ of error to operate as a supersedeas may issue, returnable to the Supreme Court of the United States, to be held at the city of Washington, in the District of Columbia, upon its giving bond as required by law.

THE ILLINOIS CENTRAL RAILROAD COMPANY,
By MAYES & HARRIS, *Attorneys.*

And the following endorsements appears on the back:

Filed May 16th, 1893.

L. B. MOSELEY, *Clerk.*

Writ of error granted in open court at May term, 1893, this May 16th, 1893.

H. C. NILES, *Judge, &c.*

And on the same day the defendant presented its assignment of errors in the words and figures following:

UNITED STATES OF AMERICA,
Southern District of Mississippi, Eastern Division.

In the Circuit Court of the United States, at the May Term, 1893.

WILLIAM WALKER
vs.
ILLINOIS CENTRAL RAILROAD COMPANY.

No. 3547. Assignment of Errors.

97 Comes the plaintiff in error, the said Illinois Central Railroad Company, and for error in this cause assigns as follows, to wit:

The circuit court erred in its judgment at this present term whereby it considered and adjudged that the plea to the jurisdiction of the court interposed by the plaintiff in error be not sustained and in proceeding further with this cause.

Respectfully submitted.

EDWARD MAYES,
Att'y for Plaintiff in Error.

Filed May 16th, 1893.
L. B. MOSELEY, *Clerk.*

And on the same day the plaintiff in error presented its writ-of-error bond in the words and figures following:

UNITED STATES OF AMERICA,
Southern District of Mississippi, Eastern Division.

Know all men by these presents that we, the Illinois Central Railroad Company, as principal, and R. W. Millsaps and John Hart, as sureties, are held and bound to William Walker, his executors, administrators, or assigns, in the penal sum of twenty-five hundred dollars; for whose payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents.

98 Seal- with our seals and dated this — day of May, 1893.

The condition of this bond is such that whereas, in the circuit court of the United States for the eastern division of the southern district of Mississippi, on the 8th day of May, A. D. 1893, by the judgment of said court, the said William Walker recovered against the said Illinois Central Railroad Company in a certain suit therein pending the sum of twelve hundred dollars, and the said Illinois Central Railroad Company prayed and obtained an appeal to the Supreme Court of the United States to revise or reverse said judgment:

Now, if the said Illinois Central Railroad Company shall prosecute said appeal with effect, or, in case of failure therein, shall pay and satisfy the amount of said judgment and all costs and damages according to the consideration of said appellate court, and, moreover, perform and satisfy such the consideration and judgment of said

appellate court thereon, then this obligation to be void; otherwise it is to remain in full force.

[SEAL.] ILLINOIS CENTRAL RAILROAD CO., [S'L.]
By J. C. WELLINGS, *Vice-President.* [S'L.]
R. W. MILLSAPS. [S'L.]
JOHN HART. [S'L.]

Attest: JOHN DUNN, *Ass't Sec.*

Bond and security approved by me the 16th day of —, A. D. 189–.

H. C. NILES, *Judge, &c.*

Filed in office the 16th day of May, 1893.

Teste: L. B. MOSELEY, *Clerk.*

And on the same day citation was issued in said cause, which, with the return thereon, is in these words:

99 UNITED STATES OF AMERICA,
State of Mississippi, Eastern Division of the Southern District.

To William Walker, Greeting:

You are hereby cited and admonished to be and appear before the Supreme Court of the United States, at the city of Washington, in the District of Columbia, on the 15th day of July, 1893, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States in and for the eastern division of the southern district of Mississippi, wherein The Illinois Central Railroad Company is plaintiff and you are defendant in error, to show cause, if any there be, why the judgment in said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court of the United States, this the 16th day of May, in the year of our Lord one thousand eight hundred and ninety-three.

MELVILLE W. FULLER.

Witness also the signature of the Honorable Henry C. Niles, district judge of the United States in and for the district aforesaid, this the said 16th day of May, A. D. 1893.

H. C. NILES, *Judge, &c.*

Service of this citation acknowledged this May 16th, 1893.

WILLIAM WALKER,
By BRAME & ALEXANDER, *Attorneys.*

100 And the writ of error issued on the same day in the words and figures following:

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the judges of the circuit court of the United States in and for the eastern division of the southern district of Mississippi, Greeting:

Because manifest error hath intervened in the record, process, proceeding-, and judgment in a cause lately pending in your said court, wherein William Walker was plaintiff and The Illinois Central Railroad Company was defendant, and wherein on the — day of May, 1893, the same being a day of the May term, A. D. 1893, of said court, judgment was rendered in favor of said William Walker against the said Illinois Central Railroad Company for twelve hundred dollars and cost of suit, to the great damage of the said Illinois Central Railroad Company, as by its petition we are informed, and we, being willing that error, if any there be, shall be corrected in due form and full and speedy justice done in the premises, do command you, if judgment be so rendered, that you send, certified under your signature and the seal of your said circuit court, a full, true, and perfect copy of the said record, process, proceedings, and judgment of your said circuit court in said cause as the same appears of record in your office, so that the same, together with this writ, be before our Supreme Court on or before the 15th day of July, 1893, in the city of Washington, D. C., in order that upon inspection
101 thereof our said Supreme Court may cause to be done for the correction of the errors therein what of right and according to law ought to be done.

Witness the Hon. Melville W. Fuller, Chief Justice of our said Supreme Court, the 16th day of May, A. D. 1893.

Witness also the signature of the clerk and seal of said circuit court of the United States in and for the eastern division of the southern district of Mississippi, hereto affixed, at office, at Jackson, Mississippi, the 16th day of May, A. D. 1893.

[SEAL.] L. B. MOSELEY, *Clerk.*

And the return thereon in these words:

UNITED STATES OF AMERICA,
Southern District of Mississippi.

In obedience to the command of the within writ I herewith transmit to the United States Supreme Court, at Washington, District of Columbia a duly certified transcript of the record and proceedings in the within-entitled cause, with all things concerning the same.

In witness whereof I hereunto subscribe my name and affix the seal of the circuit court of the United States for the southern district of Mississippi, at my office, in the city of Jackson, this 19th day of June, A. D. 1893.

[Seal U. S. Circuit Court, 5th Circuit, Southern District of Mississippi.]

L. B. MOSELEY, *Clerk.*

102 UNITED STATES OF AMERICA,
Southern District of Mississippi.

I, L. B. Moseley, clerk of the circuit court of the United States for the southern district of Mississippi, do hereby certify that the foregoing writings annexed to this certificate are true, correct, and compared copies of the original remaining on file and of record in my office, and that they constitute a true copy of the record and of the assignment of errors and of all proceedings in the suit of William Walker *vs.* The Illinois Central Railroad Company, No. 3547 on the law docket of said circuit court, with all things concerning the same,

In witness whereof I have hereunto set my hand and the seal of said court this 19th day of June, in the year of our Lord one thousand eight hundred and ninety-three, and of the Independence of the United States of America the one hundred and seventeenth.

[Seal U. S. Circuit Court, 5th Circuit, Southern District of Mississippi.]

L. B. MOSELEY, *Clerk.*

103 UNITED STATES OF AMERICA,
Southern District of Mississippi, Eastern Division.

In the Circuit Court of the United States, at the May Term, 1893.

WILLIAM WALKER
v.
THE ILLINOIS CENTRAL RAILROAD COMPANY. } Assignment of Errors.

Comes the plaintiff in error, the said Illinois Central Railroad Company, and for error in this cause assigns as follows, to wit:

The circuit court erred in its judgment at this present term whereby it considered and adjudged that the plea to the jurisdiction of the court interposed by the plaintiff in error be not sustained and in proceeding further with this cause.

Respectfully submitted.

EDWARD MAYES,
Att'y for Pl'ff in Error.

[Endorsed:] 3547. Assignment of errors. Filed May 16, 1893. L. B. Moseley, clerk.

Endorsed on cover: Case No. 15,340. S. Mississippi C. C. U. S. Term No., 244. The Illinois Central Railroad Company, plaintiff in error, *vs.* William Walker. Filed June 26th, 1893.

FILED
APR 6 1896
JAMES H. McKENNEY,
CLERK

Supreme Court of the United States.

October Term, 1895.

No. 244.

THE ILLINOIS CENTRAL RAILROAD COMPANY,

PLAINTIFF IN ERROR.

v.

WILLIAM WALKER.

MOTION TO DISMISS WRIT OF ERROR.

15,340.

FILED.
APR 6 1896
JAMES H. McKENNEY,
CLERK.

In The Supreme Court of the United States.

October Term, 1895.

THE ILLINOIS CENTRAL RAILROAD COMPANY.

244. v.

WILLIAM WALKER.

ABSTRACT AND BRIEF FOR DEFENDANT IN ERROR. ON MONTION TO DISSMISS AND ON THE MERITS.

15,340.

L. BRAME,
For Defendant in Error.

In The Supreme Court of the United States.

October Term, 1895.

THE ILLINOIS CENTRAL RAILROAD COMPANY.

244. v.

WILLIAM WALKER.

ABSTRACT AND BRIEF FOR DEFENDANT IN ERROR.

In an action for personal injuries, defendant in error recovered judgement, from which this writ of error was prosecuted. Although it is sought to reverse the judgment on a question of jurisdiction, the record contains no certificate of any question of jurisdiction as required by section 5 of the act of March 3 1891. On the issue raised by the plea to the jurisdiction, the question was whether the defendant corporation was a citizen of the southern district of Mississippi, and the determination of this question involved various matters of law and fact. It was shown that the defendant was using and operating a line of railway in the state of Mississippi, with various branches, side-tracks, station houses, rolling stock etc., under a long, complicated and involved agreement of lease, by which it claimed the right to the use and enjoyment of said real and personal property for a period of four hundred years, under franchises granted by the state of Mississippi. Whether said agreement of lease for this long term of years, in which the affairs of the defendant, originally an Illinois corporation, are most intimately blended and complicated with the affairs of a Mississippi corporation, together with the use and operation of the railroad, rolling stock etc., operated as a consolidation so as to make the defendant a Mississippi corporation, was a matter for consideration in the court

below, ar[illegible] to decide this necessitates a consideration of the entire record. The act of the legislature of the state of Mississippi authorizing the consolidation of the Illinois Central Railroad Company with the Chicago, Saint Louis & New Orleans Railroad Company (the Mississippi corporation) appears on page 39 of the record. The very elaborate agreement between said corporations, by which it was shown that the defendant came into possession of and was using and operating the railroad, under franchises granted by the state of Mississippi, appears on page 41 *et seq* of the record.

The suit was brought February 13, 1892. The defendant was sued as a citizen of the southern district of Mississippi, the summons being served on its station agent as required by law at Jackson, Miss. in said district, February 13, 1892,(R. 5). On May 2, 1892, the defendant filed a plea in abatement in the following words:

" And the said defendant, by its attorneys, Messrs Mayes & Harris, appearing for no other purpose than to make this plea, and reserving all manner of exceptions, comes and says that this court ought not to have or take further cognizance of the action aforesaid, because it says it is not a citizen of the southern district of Mississippi nor of the state of Mississipppi; and this the defendant is ready to verify; wherefore it prays judgment whether this court can or will take further cognizance of the action aforesaid."

Although the suit was instituted several months before the plea was filed, it will be noted that it does not allege that the defendant was not a citizen of the district *when the suit was commenced.*

A trial was had of the issue raised by this plea in abatement May 10, 1893, when plaintiff prevailed. (R. 6). Aftewards a plea of the general issue was filed on which a trial was had resulting in a verdict and judgment for plaintiff for $1,200. (R. 9). Thereupon bond was given and this writ of error was sued out May 16, 1893.

We have made a motion to dismiss, which, by leave of the court, we will submit with the main case and on the same brief.

ARGUMENT.

1. The controversy in this case depends entirely upon the opposite parties being citizens of different states. Such being the case, we submit that under a proper construction of the act of March 3, 1891 (26 St. L. 826) the question involved is within the final jurisdiction of the circuit court of appeals, and that this court has no jurisdiction, except upon a cirtificate of some question of law from the court of appeals or by certiorari to that court.

It is true, section 5 of the act of 1891, provides that appeals or writs of error may be taken from a district or circuit court "In any case in which the jurisdiction of the court is in issue." But this is very general language and embraces many different classes of cases involving questions of jurisdiction. In fact, it would be impossible to enumerate the different cases falling within the very general language of this clause if given a liberal and comprehensive construction. Section 6 provides that the "judgement or decrees of the circuit court of appeals shall be final *in all cases in which the jurisdiction is dependent entirely upon the opposite parties to the suit or controversy being aliens and citizens of the United States, or citizens of different states.*" It also provides that "In all cases not hereinbefore in this section *made final*, there shall be of *right* an appeal or writ of error or review of the case by the supreme court of the United States, where the matter in controversy shall exceed one thousand dollars besides costs." This, we submit, is a qualification of the general language first above quoted. It surely could not have been intended in a case in which the jurisdiction of the court depended on the diverse citizenship of the parties, and where a recovery is had for $5, an appeal or writ of error might be prosecuted direct to the supreme court, when in a case involving millions, if the appeal or writ of error is taken to the circuit court of appeals, its judgement would be final. It is very well known that cases involving alienage and diverse citizenship often present lengthy and very complicated questions of fact,

extremely difficult of determination. These questions, it was the evident purpose of the legislation we are considering to keep out of the supreme court. If the opposite view is correct then, without regard to amount, the dockets of this court may be crowded with appeals or writs of error really presenting only questions of fact, for, whether the court had jurisdiction because of the alienage or diverse citizenship would in many cases depend entirely upon questions of controverted fact. As was said in *Lau Ow Bew v. United States*, 144 U. S. 47, the act of March 3, 1891, "was passed to facilitate the prompt disposition of cases in this court and to relieve it from the oppressive burden of general litigation which impeded the examination of cases of public concern, and operated to the delay of suitors." This language correctly states the purpose of this and other legislation on the same general subject. Such purpose would not be subserved by a construction of the act in question which would greatly *increase* the number of controversies to be brought to this court in the class of cases mentioned.

In *Wauton v. DeWolff*, 142 U. S. 138, it was expressly decided that this court had no jurisdiction over an appeal from a circuit court, taken after the act of 1891 went into effect, in a case where the jurisdiction depends upon the diverse citizenship of the parties. The court used this language: "By the act of March 3, 1891, (26 Stat. 826, c. 517) establishing the circuit court of appeals, the jurisdiction of this court dependent upon diverse citizenship was taken away." There the appeal was directly from the circuit court to the supreme court, as in this case, and hence the decision is exactly in point. *Railway Co. v. McBride*, 141 U. S. 127, is not applicable, because the decision therein was made under the act of February 25, 1889, and before the act of 1891 went into effect. The only case we find directly in point is that of *Wauton v. DeWolff*, *supra*, and its correctness seems never to have been questioned.

We are aware that it has been held by this court that in case of an appeal or writ of error involving the question of jurisdiction the party must elect whether to go to the supreme court on the question of jurisdiction or to the circuit court of

appeals on the whole case. But this does not militate against our position. Nor does it affect the decision in *Wauton v. DeWolff*. The correct view, as we maintain, is that the appeal or writ of error may be prosecuted direct to this court on any question of jurisdiction that may properly be brought before it, and this includes all questions of jurisdiction the determination of which is not made final by the decision of the circuit court of appeals. No want of harmony or uniformity of decision can result from this view, because it is expressly provided that questions of law may be certified to this court by the circuit court of appeals, in which event this court may pass on the same, or may take cognizanc of and decide the whole case; and, in matters of great public interest or concern, the supreme court may review the entire controversy by certiorari.

Considering together all of its provisions, the construction for which we contend gives full meaning to every part of the act, and at the same time effectuates the manifest purpose and policy of the legislation, which, as stated above, was to relieve this court by *restricting* its jurisdiction and excluding controversies in respect to certain designated matters made final by the judgment and decisions of the circuit court of appeals, subject, however, to review on certificate of questions of law or by certiorari as provided.

It is well settled that the appellate jurisdiction of this court is exercised only by virtue of and in accordance with the acts of Congress on the subject. *Mining Co. v. Turck*, 150, U. S. 138.

2. Assuming that this case is of a class of cases that may be reviewed by direct appeal to this court, inasmuch as the record contains no certificate of the question of jurisdiction sought to be decided, as required by the act of March 3, 1891, the writ of error must be dismissed. *Maynard* v. *Hecht*, 151 U. S. 324; *The Bayonne*, 159 U. S. 687. *Van Wagenen* v. *Sewall*, 160 U. S. 369.

Opposite counsel contend that the question of jurisdiction is sufficiently certified for two reasons:

First. Because, as is alleged, the case comes up on a special bill of exceptions.

Second. Because the writ of error was granted on a petition accompanied by an assignment of errors on the question of jurisdiction. But we submit that the contention is not correct.

An inspection of the record will show that the case does not come up on a special bill of exceptions. It is true, a bill of exceptions was taken to the action of the court in deciding upon the issue raised by the plea in abatement, but this was on May 8, the bill being signed May 9, 1893. (R. 5.) The cause then proceeded regularly and there was a trial on the issue raised by the plea of general issue, when plaintiff recovered judgment for $1200. On May 16, 1893, defendant gave bond and sued out an ordinary writ of error. No mention of the bill of exceptions, or any question of jurisdiction is made in either the bond or the writ. The only entry made by the judge was "Writ of error granted in open court at May term, this May 16, 1893." (R. 52.) This would be the appropriate entry in case of an appeal upon the whole case—involving the sufficiency of the declaration; whether the amount sued for was sufficient to give jurisdiction; whether the defendant was served with process in the proper district, and all other questions that could be raised on the entire record. It is said that the writ of error was granted on a petition with which was filed an assignment of errors on the question of jurisdiction. But this was immaterial. The judge granting an appeal or writ of error is not required to read or examine the assignment of errors, which is filed with the clerk, and is intended for the inspection of the appellate court. But whatever may be said of appeals in *equity*, it has repeatedly been held that a petition for a writ of error at law constitutes no part of the record. *Clark* v. *Pennsylvania*, 128 U. S. 395; *Warfield* v. *Chaffe*, 91 U. S. 690; *Manning* v. *French*, 133 U. S. 186; *Butler* v. *Gage*, 138 U. S. 52; *Leeper* v. *Texas*, 136 U. S. 462.

We are not now dealing with a mere rule or matter of practice, but with a question affecting the *jurisdiction of this court*. The statute, in plain terms, directs that the question of jurisdiction *alone shall* be certified to the supreme court for decision.

The decisions of this court do not indicate that this plain and mandatory requirement, affecting its jurisdiction, will be allowed to be dispensed with or frittered away by intendment or construction. Here the court would have to search through the record to ascertain what was decided by the court below on the question of jurisdiction. Did that court mean to hold as a matter of law that defendant's plea in abatement should be overruled because it did not aver that the defendant was not a citizen of the district *at the time the suit was instituted?* Did it decide that by reason of the actual use and operation of the railroad, rolling stock etc., under the very peculiar and far-reaching agreement in the record called a lease, there was in law and in *fact* a consolidation with the other railroad company, by means of which it became a Mississippi corporation? Did it decide that under the constitution and laws of Mississippi the defendant, as a railroad company, exercising franchises granted by the state, became and was, as to third persons, a domestic corporation without reference to the question of consolidation? These and other questions arise on reading the record, leaving the court in doubt as to what was decided on the question of jurisdiction. This court has held that in cases like this the question or questions of jurisdiction must be clearly and distinctly certified for decision, and the certificate is assimilated to certificates of division of opinion in civil cases under sections 650 and 652 of the Revised Statutes. In *Maynard* v. *Hecht*, 151 U. S., speaking of the rules applicable to such certificates of division, the court used this language: "Each question had to be a distinct point or proposition of law, clearly stated, so that it could be definitely answered without regard to the other issues of law in the case; to be a question of law only, and not a question of mixed law and fact, and hence could not involve or imply a *conclusion* or judgment on the weight or effect of testimony or facts adduced in the case." In that case the court responding to a suggestion identical with that made by counsel here, that the allowance of the writ of error could be considered with other papers in determining whether the question of jurisdiction had been properly certified for decision, used this language: "But in any

view the absence of the formal certificate can not be helped out by resort to these papers. The inquiry is not whether we can ascertain the question sought to be presented but whether we can exercise jurisdiction under the statute, which we cannot if the certificate is an absolute prerequisite, as we hold it to be." The court further said: "The narrowness of range in the particular instance can make no difference in the application of the principle." To the same effect see *Morgan* v. *Hagerman*, 151 U. S. 329.

It is claimed that there was some relaxation of this rule in *Shields vs. Coleman* 157 U. S. 168. But this is not true. That was an equity case in which the question of jurisdiction was clearly defined, and the order of the court granting the appeal contained this language: "*This appeal is granted solely upon the question of jurisdiction*, and unless counsel shall agree by stipulation, filed with the clerk, in respect to the portions of the record to be transcribed and filed in said United States supreme court under said appeal as prayed and granted, the appellant has leave to present the record to the court on Saturday, the 29th of July inst., for the determination of *what portion of the record shall be certifie' to said supreme court under said appeal.*" As shown in the report of the case. "*Subsequently the court made the entry suggested in the later part of this order, and directed the portions of the record to be certified to this court, and under that direction the record was prepared.*"

This was held sufficient. The court did not overrule or qualify the decision *Maynard vs. Hecht*, but approved it, and among other things in the opinion said: "This court will not of itself search nor follow counsel in their search of the record to ascertain whether the judgment of the trial court did or did not turn on some question of jurisdiction. *But the record must affirmatively show that the trial court sends up for consideration a single, definite question of jurisdiction.*" In the subsequent case of *Colvin vs. Jacksonville*, 157 U. S. 368, the appeal was dismissed on the authority of *Maynard vs. Hecht*. And in the still later case at the same term, *Davis Building Co. vs. Barber*; 157 U. S. 673, there was a demurrer to a declaration on the ground

that the court had no jurisdiction over the subject matter, and that it did not state facts constituting a cause of action. The demurrer was sustained and the suit dismissed. Plaintiff sued out a writ of error, as to which this court said: "The jurisdiction of this court is invoked upon the ground that the only question in the case was as to the jurisdiction of the circuit court, but that question was not certified to this court for decision, and the writ of error must be dismissed upon the authority of *Maynard vs. Hecht.*" In that case a very narrow question was presented, and if the court had not felt constrained to adhere to a rule firmly established and in accord with the plain requirements of the statute, it could have easily ascertained and passed upon the question of jurisdiction. There would have been no difficulty in ascertaining the question. But, holding that the "narrowness of range in the particular instance" could make no difference in the application of the principle, it refused to entertain the writ of error and dismissed the same.

In the case of *The Bayonne*, decided at the present term, (159 U. S. 687), the very question under discussion was again carefully and fully considered by this court, when the doctrine deliberately announced in *Maynard vs. Hecht* was re-affirmed. The prayer for appeal recited that: "The above named claimant, John Edward Payne, considering himself agrieved by the final decree entered in this case on the 21st day of December, 1892, hereby appeals from said decree to the United States supreme court *upon the ground that this court was without jurisdiction to make said decree.*" This was endorsed by the presiding judge, "Appeal allowed." Afterwards, by order of the court, an assignment of errors was filed *nunc pro tunc*, specifically raising the question of jurisdiction invoked on appeal. This court held that the filing of the assignment of error *nunc pro tunc* was unauthorized, but in its opinion said: "*We do not, however, regard the assignment of errors and the action of the court in directing it to be filed as a compliance with the statutory provisions and equivalent to the certificate required.*" In another part of the opinion the court said: "In *Maynard vs Hecht*, 151 U. S. 324, we held that a certificate from the court below of the

question of jurisdiction to be decided was an absolute prerequisite to the exercise of jurisdiction here, and indicated by reference to the settled rules in relation to certificates of division of opinion in what manner we thought the certificate should be framed."

In the case of *Coustruction Co.*, v *Gibney*, 160 U. S. 217, there was a plea to the jurisdiction, and a *demurrer to this plea* which was overruled. Of course this presented a *question of law only*, and it was the *sole* question. No question of fact was in the remotest degree involved. The writ of error was prayed for and granted on this single question of law as to jurisdiction, and it was held on a general allowance of the writ that this was a sufficient compliance with the statute requiring that "the question of jurisdiction alone shall be certified to the supreme court from the court below for decision." The record certified did not involve matters of fact or mixed questions of law and fact as in this case.

In the subsequent case of *Van Wagenen* v. *Sewall*, 160 U. S. 369, the question under discussion was again carefully considered, and the writ of error was dismissed on the authority of *Maynard* v. *Hecht* and other cases. Referring to the imperative requirement that the record shall show that the single question of jurisdiction was presented, and, adhering to the established rule that this would not and could not be considered in connection with any other question, the court used this language: "In any event, however, we cannot be required to search the record to ascertain whether the petition was dismissed for the want of equity or for some other reason. *Shields* v. *Coleman*, 157 U. S. 168, 177. Indeed, it appears to have been the very object of the fifth section of the act of 1891 to have the question of jurisdiction plainly and distinctly certified to us, or at least to have it appear so *clearly in the decree of the court below that no other question was involved, that no further examination of the record would be necessary.*"

Looking at the final judgement in this case, or at the previous order adjudging in favor of plaintiff on the plea in abatement, in the absence of a certificate, it certainly can not be said that

it "appears to clearly from the order or judgment that only the question of jurisdiction was involved, no further examination of the record is necessary." Without the certificate required by the statute, the court would be compelled to go into a *collateral* inquiry in order to determine whether the defendant had in fact become a domestic corporation. This would involve an examination of the various charters in the record, together with the act of the legislature authorizing a consolidation, the voluminous agreement before alluded to and the matters of fact dehors these instruments. There being no certificate of the exact question passed upon by the court below, the supreme court, with such a record as this, if it could make the search, might be at a loss to determine just what was decided and what was intended to be referred to it for review by the general entry "Writ of error granted." And it is not at all likely that opposing counsel would agree as to this. It is manifest that it was never contemplated that this court, in passing upon the numerous difficult questions of jurisdiction arising under this statute, should be embarassed in the performance of its duties by the necessity of making an examination of the entire record in order to ascertain what questions are sent up for decision in any case. The statute was enacted in view of the urgent necessity of lessening the labors of this court by restricting the limits of its jurisdiction, and language was employed which by long and uniform construction in cases of the certificate of division of opinion had received a fixed and definite meaning. Refering to this, in the case of *Maynard* v. *Hecht*, the Chief Justice aptly said: "The inquiry is not whether we can ascertain the question sought to be presented, but whether we can exercise jurisdiction under the statute."

The subject under discussion has been very fully considered by this court, but we cite *Water Co., v. Waco.*, 86 Texas, 661. The Texas statute required the court of civil appeals in certain cases "to certify the very question to be decided to the supreme court." A general demurrer was sustained to a petition and an appeal was taken, in which the ruling of the court was assigned for error. The court in the case referred to, refused to

consider the question presented because not properly certified. In its opinion is this language: "The determination of the question wether the demurrer was properly sustained to the petition would require an investigation of the powers of the city of Waco under the law incorporating it, the powers of the water company with which it made a contract for water, as well as an inquiry whether the contract between the city and the water company was in due form and executed by proper officers and within the lawful power of the two corporations. In the consideration of these general questions many questions subordinate in nature would necessarily arise and would require determination, before it could be determined whether a general demurrer to the petition was properly sustained. Whether a petition is sufficient to maintain an action is a question of law; but as is frequently the case the decision of that question involves the decision of many and different questions of law; and in order that the time of this court may not be taken up in deciding questions about which a civil court of appeals may have no doubt and desires no decision, those courts are required to certify —to make certain or definite—the very question to be decided."

3. The declaration in this case, in careful language, avers the diverse citizenship of the parties, and that the defendant at the institution of the suit was a citizen of the district in which it was duly served with process. It was not attempted to be shown by any pleading of the defendant that the parties were not citizens of different states. Averring several months after the suit was instituted, and after the record showed jurisdiction, that the defendant was not *then* a citizen of the district, did not affect the jurisdiction of the court, *Stevens v. Nichols*, 130 U. S. 230; *Crehore v. Railway Co.*, 131, U. S. 230; *Jakson v, Allen*, 132 U. S. 27; *Compaigne v. Hall*, 137 U. S. 61; *Kellum v. Keith*, 144 U. S. 568; *Mattingly v. Railroad Co.*, 158 U. S. 53.

The jurisdiction depends upon, and is conclusively fixed by the citizenship of the parties *at the time the suit is instituted*. To aver that three months after this the defendant is not a citizen of the district, is of no more avail than to plead that such was the fact three years before the suit was begun.

It is no answer to this proposition to say that a corporation can not change its domicile, and that if the defendant was not a citizen of the district May 2, 1892, when the pleading was filed it was not a citizen February 13, 1892, when the suit was instituted. In the first place, it is not true that a corporation can not change its domicile. Being chartered in another state, it may withdraw its certificate after the suit is instituted, or its charter in the state where the suit is instituted may expire or be annulled after the suit is brought, and other instances might be mentioned in which there would be a change of domicile or residence. Certainly in such instances the jurisdiction of the court lawfully acquired would not be interfered with by the subsequent events.

But the court will not go beyond the *pleadings* and look to the facts in a particular case in order to determine whether there was or *could* have been a change of residence or domicile after the suit was brought; and especially will this not be done to help out a plea which does not pretend to put in issue the essential and important fact upon which the jurisdiction depends and which is therefore fatally defective.

The record does not purport to show all that was done by the court below. Every intendment is in favor of the final judgment, and it is to be presumed, in favor of the regularity and validity of that judgment, that everything necessary to be proved was proved before it was entered.

It will hardly be contended that this court, on the present appeal, can review the entire record, as upon a motion in arrest of judgment. In the absence of matters *in pais*, the court can only look to the final judgment and the sufficiency of the pleadings to support it. Looking to the pleadings, the jurisdiction is distinctly shown; and the judgment is presumed to have been entered on proper proceedings and proof.

The pleading called in the record a plea in abatement, which did not deny the essential fact upon which jurisdiction attached when the suit was instituted, was overruled, that is to say it was ordered by the court "that said plea be not sustained." (R 51.) Thereupon the defendant, instead of filing a

plea which would in terms challenge the jurisdiction of the court, filed a plea of general denial whereby each and every allegation of the declaration was put in issue and the parties went to trial on the merits. (R 8.) In as much as the record showed that the case was within the general jurisdiction of the court, that is that the controversy involved more than $2000, and was between citizens of different states (which has never been denied,) the defendant, by filing the plea of general issue and going to trial on the whole case, waived the mere personal privilege of objecting to the maintenance of the suit on the ground that it was brought in the wrong district. *Construction Co.*, v. *Fitzgerald*, 137 U. S., 98; *Railway Co.*, v. *McBride*, 141 U. S., 127; *Southern Pacific Co.*, v. *Denton*, 146 U. S., 202; *Central Trust Co.*, v. *McGeorge*, 151 U. S., 129; *Construction Co.*, v. *Gibney*, 160 U. S., 217.

But if we concede that the plea was not fatally defective, that it was sufficient to test the jurisdiction of the court, and therefore, that it was error to overrule it, the validity of the final judgment will in nowise be affected. The record upon which the defendant brings up the case is silent as to every thing that subsequently occurred, except the entry showing the trial and judgment. Under the act of 1875, if the court was without jurisdiction, it would have been its duty, on proper showing, even without a plea, to dismiss the case. In the absence of all reference to the subsequent proceedings, the court will indulge every presumption in favor of the judgment. The final judgment of a court having jurisdiction covers a multitude of errors.

We submit, therefore, that in no view of the case can the plaintiff in error complain of any ruling as to the question of jurisdiction now presented.

If either of the propositions hereinbefore submitted are held to be correct, of course it will not be necessary for the court to consider the very important and interesting question of consolidation arising on the various charters and acts of the legislature below discussed.

4. On the authority of *Shaw* v. *Quincy Mining Co.*, 145 U.

S., 444; *Southern Pacific Co.*, v. *Denton*, 146 U. S., 202, and other cases decided by this court, the general proposition is conceded that a corporation of one state only can not be sued in a United States circuit court in another state, of which the plaintiff is not a citizen, although it does business in such other state, and has a general agent therein. But we contend that the Illinois Central Railroad Co., is not doing business in the state of Mississippi under a mere license and as a foreign corporation. It will be seen that the Chicago, St. Louis & New Orleans Railroad Co., was a domestic corporation. (R 40.) By acts of the legislature approved March 6, 1880, and March 1, 1882, respectively, authority was given the Chicago, St. Louis & New Orleans Railroad Co., to consolidate with the Illinois Central Railroad Co., and the latter company was authorized to lease the railroad of the former. (R 39-41.) It will be noted however, that the act of March 6, 1880, did not provide for a lease *but only authorized the consolidation* of the two companies, under such name as might be agreed upon. The act provided that "such consolidated company shall have within this state *all the powers, privileges, rights and franchises which belonged to said Chicago, St. Louis & New Orleans Railroad Co., by charter granted by this state and shall be subject within this state to all the obligations, duties and responsibilities imposed by said charter.*" (R 40-41.)

On the trial in the court below the following agreement of counsel was made and read in evidence: "It is agreed that at the time the suit was instituted the defendant was, and now is operating a line of railroad through this district, and doing so under and pursuant to the written agreement or lease of date 3d of June, 1882, *and the rights and powers conferred by it and the several acts of the legislature ot this state*, of date April 18, 1873, incorporating the New Orleans, St. Louis & Chicago Railroad Co., * * * *An act of March 6, 1880*, entitled an act to authorize the Chicago, St. Louis & New Orleans Railroad Co., *to consolidate* with the Illinois Central Railroad Co." * * * (R 7.)

It is important to note that the act of March 1, 1882,

authorizing the defendant to consolidate with the Chicago, St. Louis & New Orleans Railroad Co., and two other railroad companies, "*and* to lease each of said railroads," is not included in this agreement. It is true this last mentioned act was afterwards introduced in evidence, but *it was not embraced in the agreement of* counsel, as the other act was. Therefore, it was solemnly agreed that the defendant was in possession of the railroad, operating the same *under the rights conferred by said written agreement and the act of March 6, 1880*, which provides explicitly for *consolidation*, and that the consolidated company shall be subject within this state to all the charter obligations of the Chicago, St. Louis & New Orleans Railroad Co. It is also to be noted in this connection that the defendant's charter granted in the state of Illinois does not authorize the corporation to lease a railroad in another state. Then by what authority did the defendant, as an Illinois corporation go into another state to operate and control a railroad, with all of its real and personal property, under an agreement which blends and complicates its affairs for centuries to come with the affairs of another corporation? Counsel have agreed that this was done under and by virtue of the terms of this written agreement *and the act of March 6, 1880*, authorizing the defendant to consolidate with another company.

This, we submit, was in effect, to agree that there was a consolidation whereby the defendant became a Mississippi corporation. Having made this agreement and gone to trial on it, after an adverse decision, the defendant will not be permitted here to change its position and assest that it never claimed any rights under the act of 1880, but acted and claimed throughout under another and different statute not mentioned in the agreeement, one which, of course, the court below, in view of the agreement, did not and could not consider and act upon as the controlling statute. Such a course would not be just either to the court or the defendant in error.

Opposite counsel are mistaken in saying that it was agreed, in effect, that no consolidation ever took place. After agreeing that the defendant was operating the railroad pursuant to the

written agreement alluded to and under the powers conferred by it and the several statues mentioned, including the act of 1880 providing for consolidation, it was then stipulated that the companies "were never consolidated, *unless said lease and facts above stated amount to such.*" (R. 7.) It was not the purpose of either party to admit in terms that there was or was not a consolidation, and the last clause in the agreement was inserted for the purpose of leaving this as an open question to be determined by the court from all the facts admitted or proved.

When we come to examine the written agreement referred to it will be found to be the most remarkable and far-reaching document probably ever presented to a court under the guise of a lease. It turns over to the Illinois Central R. R. Co., party of the second part, for the term of four hundred years, the railroad of the Chicago, St. Louis, and New Orleans R. R. Co. party of the first part, extending from New Orleans through the states of Louisiana, Mississippi, Tennessee and Kentucky to a point on the Ohio river opposite Cairo, Illinois. This includes all the side-tracks, branches, land, gravel pits, quarries, station houses, machine shops and improvements, and all the rolling stock and other personalty owned or used in connection with the railroad; also all stores and supplies and all other effects of the first party owned July 1, 1882, and all its unsold *mortgage bonds* and all money then on hand, as well as all choses in action, with unlimited power to compromise and give releases in respect to the same. The right is given also to use all timber, rock, gravel and other material required in the operation, maintenance and *improvement* of the road and its branches. It is stipulated that the Illinois Central Railroad Co., in addition to $400.000 per annum for the use of the property, is to advance, and pay nearly $8,000,000 of mortgage indebtedness due and to become due thereon, besides interest, in consideration of which it is to receive mortgage bonds; also that it will purchase "*all now outstanding shares of stock* of the party of the first part which may be offered to it at the office of its treasurer in the city of New York, giving in payment *or exchange* therefore the certificates of the said party of the second part" to be called, "Illinois Central

Railroad Company four per cent. leased line stock" certificates. (R. 46, 47.)

It will thus be seen that all the property of this great railroad system, including even money and property consumable in its use, is turned over to the Illinois Central Railroad Co. to be held, used and enjoyed practically until the end of time, for the agreement further provides that at the end of the four hundred years it may still hold and operate the railroad until any and *all* sums of money advanced by it at the request of the other company shall be repaid. There is no limit whatever specified to the "improvement" that may be made of the railroad and its numerous branches, and no limit to the number of outstanding shares of stock of the other corporation the defendant obligates itself to absorb. And all of this, it is agreed, was done "pursuant to the rights conferred" by the acts of the legislature of the state of Mississippi chartering Chicago, St. Louis and New Orleans Railroad Co., and the act of March 6, 1880, authorizing it to consolidate with the defendant corporation.

We do not contend, of course, that the Illinois corporation migrated to Mississippi, but that by virtue of the inextricable blending of the affairs of the two companies under and by virtue of extraordinary franchises granted by the laws of the latter state, the defendant became, at least as to third persons, a corporation thereof and subject to be sued in the circuit court of the United States therein by a citizen of another state. *Uphoff* v. *Railroad Co.*, 5 Fed. Rep. 545; *Railroad Co.*, v. *Railroad Co.*, Ib. 19; *Clark* v. *Baruord*, 108 U. S., 436. We do not consider it necessary to cite other authorities on this point.

In the case of *The Illinois Central Railroad Co.*, v. *Smith*, 70 Miss., 344, (October 1892) it was decided by the supreme court of Mississippi that the appellant was a domestic corporation. In that case Smith, an employe, in Mississippi, of the Illinois Central Railroad Co., was entitled to certain wages, less than $100, and therefore exempt from seizure or garnishment under the laws of the state. He was indebted to one Dunkel, who brought suit in the state of Iowa and garished the railroad company. Afterwards Smith brought suit against the company

in Mississippi for his wages, and the court held that the garnishment of the defendant in another state was unavailing to defeat the exemption. This was upon the sole and distinct ground that the defendant and the plaintiff were citizens of Mississippi. If the defendant had been a non-resident and a citiizen of the state of Iowa only, under the authorities cited by the court in its opinion, the garnishment in that state would have been effectual notwithstanding the exemption laws of Mississippi.

This decision of the highest court of the state, we assume, will be taken as controlling on a question involving the construction and effect of the various charters and acts of the state legislature.

If the defendant is not a resident or citizen of Mississippi, then the wages of every employe in the state will be subject to garnishment in Iowa or other state where the company may be domeiciled, and in which there is no statutory exemption. This and other important and far-reaching questions are indirectiy involved on this writ of error. For example, in what name and by what right would the power of emminent domain be invoked should it become necessary during the next four hundred years to condemn other lands in Mississippi?

We regard it as entirely immaterial that a continuance of the corporate existence of the Chiago, St. Louis & New Orleans Railroad Co., is stipulated for in the agreement. This stipulation was evidently put in as part of a device to affect the question of jurisdiction in cases like the present. It will not, we submit, affect the real and substantial thing that the agreement and proof in this case shows was done under the laws of Mississippi.

Respectfully submitted,

L. BRAME,

Attorney for defendant in error.

Supreme Court of the United States.

OCTOBER TERM, 1895.

No. 244.

THE ILLINOIS CENTRAL RAILROAD COMPANY, PLAINTIFF IN ERROR,

vs.

WILLIAM WALKER.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF MISSISSIPPI.

BRIEF FOR THE PLAINTIFF IN ERROR.

JAMES FENTRESS,
General Solicitor, and

EDWARD MAYES,
of Counsel.

Supreme Court of the United States.

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IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF MISSISSIPPI.

ABSTRACT OF THE CASE.

This is a Writ of Error taken direct from the Circuit Court of the United States for the Southern District of Mississippi, under section 5, of the Act of March 3rd 1891, on the question of Jurisdiction alone.

Plaintiff below brought in the court aforesaid, on the 13th of February, 1892, his action for damages, as for a personal injury, against the defendant below. In his declaration plaintiff described himself as "William Walker, who is a resident citizen of the State of Arkansas," and described the defendant as "the Illinois Central Railroad Company, a corporation, being a citizen of the Southern district of Mississippi, operating a railroad, with various places of business in said district."

Thereupon the defendant filed a formal plea in abatement to the jurisdiction of the court, in the following tenor:

"And the said defendant, by its attorneys, Messrs Mayes & Harris, appearing for no other purpose than to make this plea and reserving all manner of exception, comes and says that this court ought not to have or take further cognizance of the action aforesaid, because it says it is not a citizen of the southern district of Mississippi nor of the State of Mississippi; and this the said defendant is ready to verify; wherefore it prays judgment whether this court can or will take further cognizance of the action aforesaid."

MAYES & HARRIS,
Att'ys for Defendant,

To this plea the plaintiffs replied, that "the defendant is and was when this suit was instituted a citizen of the Southern District of Mississippi."

The issue thus formed was tried by the court, without the intervention of a jury, under the following agreement (Record, page 7).

"It is agreed that at the time suit was instituted the defendant was and now is operating a line of railroad through this district and doing so under and pursuant to the written agreement or lease of date 3rd June, 1882, and the rights and powers conferred by it, and the several acts of the Legislature of this State of date April 18th, 1873, incorporating the New Orleans, St. Louis and Chicago Railroad Company, and Act dated March 11th, 1852, entitled an Act: "granting right of way through the State of Mississippi and other privileges to the New Orleans, Jackson and Great Northern Railroad Company, and Act of March 10th, 1852, entitled an Act "to incorporte the Mississippi Central Railroad Company," and the Act of May 13th, 1837, entitled an Act to incorporate the Hernando Railroad and Banking Company. And the Act of February 27th, 1878, entitled an Act "ratifying the organization of the Central Mississippi Railroad Company and to consolidate with the New Orleans, Jackson and Great Northern Railroad Company and incouporating the last-named company." And Act of March 6th 1880, entitled an Act "to authorize the Chicago, St. Louis and New Orleans Railroad Company to consolidate with the Illinois Central Railroad Company;" and it is agreed that the aforesaid Acts may be read in evidence and that defendant may read in evidence also the charter of the Illinois Central Railroad Company the defendant granted by the State of Illinois, and that copies of these Acts of the said charter and the said lease

may be prepared and filed with the clerk, and embodied in the bill of exceptions in case of appeal.

It is further agreed that the Illinois Central Railroad Company and the Chicago, St. Louis and New Orleans Railroad Company were never consolidated; unless said lease and facts above stated amount to such; and that the latter company still preserves its distinct organization, but does not operate the railroad. Also thatthe issue on the plea to the jurisdiction may be tried by the court without a jury.

"MAYES & HARRIS,
Attorneys for Defendant.
"BRAME & ALEXANDER,
Attorneys for Plaintiff."

The Bill of Exceptions (Record pp. 9 to 51.) shows the course of the trial. It was as follows:

The plaintiff below introduced

1. The agreement aforesaid: See Record page 9.
2. The *Illinois* charter of the Defendant: Record pp. 10–22.
3. The 6th, 7th and 8th Sections of the Mississippi Act of 1837, incorporating the Hernando Railroad Co.; Record, pp. 22–23.
4. The Mississippi Statute of 1852, incorporating the Mississippi Central Railroad Co : Record, pp. 23–32.
5. The Mississippi Statute of 1852, granting to the New Orleans, Jackson, etc., Railroad (a Louisiana corporation) the right of way, &c., through Mississippi: Record, pp. 32–35.
6. The Mississippi Statute of 1873, authorizing the Missippi Central and the New Orleans, Jackson, etc., to consolidate: Record, pp. 35–38.
7. The Mississippi Statute of 1878, ratifying the consolidation, &c., and conditionally incorporting the consolidated company as the Chicago, St. Louis, &c., R. Co.; Record, p. 38.
8. The Mississippi Statute of 1880, authorizing the Chicago, St. Louis, &c., Company to consolidate with the Defendant: Record, p. 39.
9. The Mississippi Statute of 1882, finally incorporating

the Chicago, St. Louis, &c., Company, and authorizing it to consolidate with the defendant, or to lease to the defendant: Record, p. 40.

10. The lease of the Chicago, St. Louis &c., Company to defendant, executed in June, 1882: Record, pp. 41–51.

This was all of the evidence in the case, the defendant introducing none: Record, p. 51.

The court thereupon decided the issue in favor of the plaintiff below, (Record, p. 8, and p. 51.)

To this decision the defendant then and there excepted, and tendered its *special bill of exceptions*, which was signed, sealed and made a part of the record on the next day. This Bill of Exceptions constitutes pages 9 to 51 of the printed record herein.

The court having sustained its jurisdiction the defendant pleaded not guilty ;and thereupon the plaintiff recovered a small judgment.

The defendant then at once (on the 16th of May) sued out a Writ of Error to this court on the point of jurisdiction alone. See petition for the writ, and the assignment of errors: Record, pp. 52–53.

SPECIFICATION OF ERRORS.

The court below erred in its judgment, whereby it considered and adjudged that the plea to the jurisdiction of the court interposed by the plaintiff in error (defendant below) be not sustained and in proceeding further with the cause.

Respectfully submitted,

JAMES FENTRESS,
General Solicitor, and
EDWARD MAYES, of
Counsel for Plaintiff in Error.

Construction Co. v. Gibney, 160 U.S. 217.

BRIEF OF THE ARGUMENT.

The Court will observe: first, that this case comes up on a formal special bill of exceptions, taken to the action of the court in ruling against the special plea to the jurisdiction, and on that alone; and, secondly, that the writ of error was, over the signature of the judge, granted in open court, on a petition therefor which tendered with it the assignment of errors, and that assignment of errors presents only the point of jurisdiction. (Record, pp. 52 and 53.)

For these reasons, either being alone sufficient, the case is sufficiently "certified" into this court, under the statute.

We maintain that the court below had no jurisdiction, for the reason that neither the plaintiff nor the defendant was a citizen of the State in which the suit was brought.

The declaration asserts that the plaintiff was a citizen of the State of Arkansas.

The question turns, therefore, on the citizenship of the Illinois Central Railroad.

The Record analyzed above, shows that it is an Illinois corporation, operating a line of railroad in Mississippi under a lease. It has never been incorporated in Mississippi.

It is true that in 1882 an Act was passed whereby the Chicago, St. Louis &c., Co., a Mississippi corporation, was granted power to consolidale with the Illinois Central Company. But it is also true, as shown by the agreed state of facts, in effect, that no such consolidation ever took place.

The Act of 1882 allowed the one company the alternative privilege of *leasing* to the other; and this was the course finally adopted.

In this state of case the law is well settled.

Koontz vs. Railroad Company, 104 U. S. 5.
Shaw vs. Quincy Mining Co., 144 U. S., 444.
Martin vs. B. & O. R. R. Co., 151 U. S. 677.

The case of Clark vs. Barnard, 108 U. S. 436. is not in

point. There, the only question was whether the statutes of Rhode Island, which of course must be construed by their own terms, were such as to have the effect of *incorporating* in that State the incorporators of the Connecticut company into a distinct Rhode Island company; and the court held, only, that the distinct subjection of them to the "charter" of the P. & P. Ry. Co., a Rhode Island company, and the investiture with all the powers of that charter, was such legislation as to have that effect, p. 450.

In this instance no such legislation was ever had. On the contrary the very laws passed, recognize the Illinois Central as a foreign corporation, and do not profess to make it any thing else.

We submit that the judgment of the court below should be revresed for want of jurisdiction.

Respectfully submitted,

JAMES FENTRESS,
General Solicitor, and
EDWARD MAYES, *of*
Counsel for Plaintiff, in Error.